रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003—05

REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 34] नई दिल्ली, अगस्त 19—अगस्त 25, 2007, शनिवार/श्रावण 28 — भाद्र 3, 1929

No. 34] NEW DELHI, AUGUST 19—AUGUST 25, 2007, SATURDAY/SRAVANA 28—BHADRA 3, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके ।

Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 अगस्त, 2007

का.आ. 2360.—केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मेघालय राज्य सरकार राजनीतिक विभाग की अधिसूचना सं. पीओएल-67/98/पार्ट/61-ए दिनांक 23 मार्च, 2007 द्वारा प्राप्त सहमति से रींजाह पुलिस स्टेशन, शिलांग (मेघालय) में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 302 के अधीन दर्ज मामला सं. 16(3)/2007 तथा उपर्युक्त अपराध में से एक अथवा अधिक अपराधों से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षड्यंत्रों तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किन्हीं अन्य अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण मेघालय राज्य पर करती है ।

[सं. 228/21/2007-ए.वी.डी.II]

चंद्र प्रकाश, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 17th August, 2007

S.O. 2360.—In exercise of the powers conferred by sub-section (1) of Section 5, read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Meghalaya Political Department vide Notification No. POL.67/98/Pt./61-A dated 23rd March, 2007, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Meghalaya for investigation of Case No. 16(3)/2007 under Section 302 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Rynjah Police Station, Shillong (Meghalaya) and attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offences committed in the course of the same transactions arising out of the same facts.

[No. 228/21/2007-AVD.III]

CHANDRA PRAKASH, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 9 अगस्त, 2007

(आयकर)

का.आ. 2361.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ङ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-1999 से 'अन्य संस्था' की श्रेणी में संगठन दि बॉम्बे टैक्स्टाइल रिसर्च एसोसिएशन, मुम्बई को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात्:—

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने सेकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा ।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :—

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5ग और 5ङ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 221/2007 फा./सं. 203/17/2006-आ.क. नि.-II]

रेनू जौहरी, निदेशक

MINISTRY OF FINANCE

(Department of Revenue)

(Central Board of Direct Taxes)

New Delhi, the 9th August, 2007

(INCOME-TAX)

S.O. 2361.—It is hereby notified for general information that the organization The Bombay Textile Research Association, Mumbai has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said rules), with effect from 1-4-1999 in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely:—

(i) The sums paid to the approved organization shall be utilized for scientific research;

(ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students:

(iii) The approved organization shall maintain books of account and get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

(a) fails to maintain books of account referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities of its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 221/2007/F.No. 203/17/2006/ITA-II]

RENU JAUHRI, Director

नई दिल्ली, 9 अगस्त, 2007

(आयकर)

का.आ. 2362.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ङ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2004 से 'अन्य संस्था' की श्रेणी में संगठन मनोविकास केन्द्र रिहेबिलिटेशन एण्ड रिसर्च इंस्टीटयूट फार दी हैंडिकैप्ड (एम आर आई एच), कोलकाता को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात्:—

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा ।

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा ।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :—

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5ग और 5ङ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 220/2007/फा. सं. 203/51/2005-आ.क. नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 9th August, 2007

(Income-Tax)

S.O. 2362.—It is hereby notified for general information that the organization Manovikas Kendra Rehabilitation and Research Institute for the Handicapped (MRIH), Kolkata has been approved by the Central Government for the purpose of cause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961(said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), with effect form 1-4-2004 in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely :—

(i) The sums paid to the approved organization shall be utilized for scientific research;

(ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students:

(iii) The approved organization shall maintain books of account and get such books audited by an accountant as defined in the explanation to sub- section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified but the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

(a) fails to maintain books of account referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities or its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Noufication No. 220/2007/F. No.203/51/2005/ITA-II]

RENU JAUHRI, Director

नई दिल्ली, 9 अगस्त, 2007

(आयकर)

का.आ. 2363.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ङ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2003 से अन्य संस्था' की श्रेणी में संगठन डा. जीवराज मेहता स्मारक हैल्थ फाउंडेशन, अहमदाबाद को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात्:–

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी प्रस्तुत करने की नियम तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा ;

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा ।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :–

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5 ग और 5 ङ के साठ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा ।

[अधिसूचना सं. 222/2007/फा. सं. 203/23/2006-आ.क. नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 9th August, 2007

(INCOME-TAX)

S.O. 2363.—It is hereby notified for general information that the organization Dr. Jivraj Mehta Smarak Health Foundation, Ahmedabad has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with Rule 5C and 5E of the Income-tax Rules, 1962 (said rules), with effect from 1-4-2003 in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely:—

(i) The sums paid to the approved organization shall be utilized for scientific research;

(ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;

(iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

(a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities or its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rule 5C and 5E of the said Rules.

[Notification No. 222/2007/F.No. 203/23/2006/ITA-II]

RENU JAUHRI, Director

नई दिल्ली, 9 अगस्त, 2007

(आयकर)

का.आ. 2364.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ङ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2001 से 'अन्य संस्था' की श्रेणी में संगठन शीफ्फैलिन लैप्रोसी रिसर्च एंड ट्रेनिंग सेंटर, कारीगरी, जिला वैल्लोर, तमिलनाडु को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात्:–

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी प्रस्तुत करने की नियम तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :–

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5 ग और 5 ङ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 219/2007/फा. सं. 203/90/2003-आ.क. नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 9th August, 2007

(INCOME-TAX)

S.O. 2364.—It is hereby notified for general information that the organization Schieffelin Leprosy Research and Training Centre, Karigiri, Distt. Vellore, Tamil Nadu has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with Rule 5C and 5E of the Income-tax Rules, 1962 (said Rules), with effect from 1-4-2001 in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely:—

(i) The sums paid to the approved organization shall be utilized for scientific research;

(ii) The approved organization shall carry out reseactiom social science or statistical resoarch through its faculty members or its enrolled students:

(iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-Section (1) of Section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

(a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities of its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rule 5C and 5E of the said Rules.

[Notification No. 219/2007/F.No. 203/90/2003/ITA-II]

RENU JAUHRI, Director

नई दिल्ली, 9 अगस्त, 2007

(आयकर)

का.आ. 2365.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ङ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2001 से 'अन्य संस्था' की श्रेणी में संगठन सेंटर फॉर इकोनोमिक एंड सोशल स्टडीज़, हैदराबाद को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात्:—

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग सामाजिक विज्ञान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से सामाजिक विज्ञान में अनुसंधान अथवा सांख्यिकीय अनुसंधान करेगा ;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अन्तर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।

(iv) संगठन सामाजिक विज्ञान के अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :-

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक विज्ञान में अनुसंधान अथवा सांख्यिकीय अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5 ग और 5 ङ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (iii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 218/2007/फा. सं. 203/74/2003-आ.क. नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 9th August, 2007

(INCOME-TAX)

S.O. 2365.—It is hereby notified for general information that the organization Centre for Economic and Social Studies, Hyderabad has been approved by the Central Government for the purpose of clause (iii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with Rule 5C and 5E of the Income-tax Rules, 1962 (said Rules), with effect from 1-4-2001 in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely:—

(i) The sums paid to the approved organization shall be utilized for research in social sciences;

(ii) The approved organization shall carry out research in social science or statistical research through its faculty members or its enrolled students;

(iii) The approved organization shall maintain book of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for research in social sciences and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

(a) fails to maintain book of accounts referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of the donations received and sums applied for research in social sicences or statistical research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities of its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (iii) of sub-section (1) of section 35 of the said Act read with rule 5C and 5E of the said Rule.

[Notification No. 218/2007/F.No. 203/74/2003/ITA-II]

RENU JAUHRI, Director

शुद्धिपत्र

नई दिल्ली, 14 अगस्त, 2007

का.आ. 2366.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, केन्द्रीय प्रत्यक्ष कर बोर्ड द्वारा जारी अधिसूचनाओं में आंशिक संशोधन करते हुए, निम्नलिखित अधिसूचनाओं में, पैरा 1 और पैरा 2 (ङ) में पद 'नियमावली 5 ग तथा 5 घ' को 'नियमावली 5ग तथा 5ड' पढ़ा जाए :–

क्रम सं.	अधिसूचना सं. और जारी करने की तारीख	संगठन का नाम
1	2	3
1.	86/2007 28-3-2007	अशोका ट्रस्ट फॉर रिसर्च इन इकोलोजी एंड दि एन्वायरन्मेंट, बंगलौर
2.	87/2007 28-3-2007	इंडियन नेशनल साइंस एकेडेमी, नई दिल्ली
3.	88/2007 28-3-2007	रामकृष्ण मिशन सेवा प्रतिष्ठान, विवेकानन्द इंस्टीट्यूट ऑफ मेडिकल साइंस, कोलकाता
4.	89/2007 28-3-2007	इंटर-यूनिवर्सिटी सेंटर फॉर एस्ट्रोफिज़िक्स, पुणे
5.	90/2007 28-3-2007	दि ऑटोमोटिव रिसर्च एसोसिएशन ऑफ इंडिया, पुणे
6.	91/2007 28-3-2007	श्री अरबिन्दो आश्रम ट्रस्ट, पांडिचेरी
7.	92/2007 28-3-2007	श्री विले पार्ले केलावानी मंडल्स श्री सी बी पटेल रिसर्च सेंटर फॉर कैमिस्ट्री एंड बायोलोजिकल साइंसिस, मुम्बई
8.	94/2007 28-3-2007	दि के जे सोमैया इंस्टीट्यूट ऑफ एप्लाईड एग्रीकल्चरल रिसर्च, कर्नाटक
9.	95/2007 28-3-2007	दि आर्य वैद्य शाला, केरल
10.	96/2007 28-3-2007	यू एन मेहता इंस्टीट्यूट ऑर कार्डियोलोजी एंड रिसर्च सेंटर, अहमदाबाद
11.	97/2007 28-3-2007	दि सिंथेटिक एंड आर्ट सिल्क मिल्स' रिसर्च एसोसिएशन (सस्मीरा), मुम्बई
12.	99/2007 28-3-2007	झंडु फाउंडेशन फॉर हैल्थ केयर, मुम्बई
13.	100/2007 28-3-2007	इंडियन कैंसर सोसायटी, मुम्बई
14.	101/2007 28-3-2007	आई टी सी संगीत रिसर्च एकेडेमी, कोलकाता
15.	147/2007 12-4-2007	पुष्पावती सिंघानिया रिसर्च इंस्टीट्यूट फॉर लिवर, रैनल एंड डाइजेस्टिव डिसीजिज़, नई दिल्ली
16.	148/2007 12-4-2007	सेंटर फॉर डेवलपमेंट ऑफ टेलिमेटिक्स, नई दिल्ली
17.	164/2007 10-5-2007	आल इंडिया इंस्टीट्यूट ऑफ मेडिकल साईंसिस, नई दिल्ली
18.	165/2007 10-5-2007	विवेकानन्द इंस्टीट्यूट ऑफ बायोटेक्नोलॉजी, प. बंगाल
19.	166/2007 11-5-2007	मुलजीभाई पअेल सोसायटी फॉर रिसर्च इन नेफ्रो यूरोलोजी, नादियाद (गुजरात)
20.	167/2007 11-5-2007	दीन दयाल रिसर्च इंस्टीट्यूट, नई दिल्ली
21.	172/2007 16-5-2007	रीजनल कैंसर सेंटर, त्रिवेंद्रम (केरल)
22.	177/2007 24-5-2007	वसन्तदादा शूगर इंस्टीट्यूट, पुणे
23.	178/2007 24-5-2007	सेंट्रल पावर रिसर्च इंस्टीट्यूट, बंगलौर
24.	179/2007 25-5-2007	निम्बकार एग्रीकल्चरल रिसर्च इंस्टीट्यूट (एन ए आर आई), फाल्तान (महाराष्ट्र)
25.	204/2007 18-6-2007	लीलावती कीर्तिलाल मेहता मेडिकल ट्रस्ट रिसर्च सेंटर, मुम्बई

[अधिसूचना सं. 226/2007/फा. सं. 203/45/2007/आ.क.नि.-II]

रेनू जौहरी, निदेशक

CORRIGENDUM

New Delhi, the 14th August, 2007

S.O. 2366.—In partial modification of the Notification issued by Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, in the following Notifications, the term 'Rule 5C and 5D' in Paragraph 1 and Paragraph 2(e) may be read as 'Rule 5C and 5E' :—

S. No.	Notification No. and Date of issue	Name of Organisation
1	2	3
1.	86/2007 28-3-2007	Ashoka Trust for Research in Ecology and the Environment, Bangalore

1	2	3
2.	87/2007 28-3-2007	Indian National Science Academy, New Delhi
3.	88/2007 28-3-2007	Ramakrishna Mission Seva Pratishthan, Vivekananda Institute of Medical Science, Kolkata
4.	89/2007 28-3-2007	Inter-University Centre for Astronomy & Astrophysics, Pune
5.	90/2007 28-3-2007	The Automotive Research Association of India, Pune
6.	91/2007 28-3-2007	Shri Aurobindo Ashram Trust, Pondicherry
7.	92/2007 28-3-2007	Shri Vile Parle Kelavani Mandal's Shri C. B. Patel Reseach Centre for Chemistry & Biological Sciences, Mumbai
8.	94/2007 28-3-2007	The K.J. Somaiya Institute of Applied Agricultural Research, Karnataka
9.	95/200/ 28-3-2007	The Arya Vaidya Sala, Kerala
10.	96/2007 28-3-2007	U.N. Mehta Institute of Cardioilogy & Research Centre, Ahmedabad
11.	97/2007 28-3-2007	The Synthetic & Art Silk Mill's Research Association (SASMIRA), Mumbai
12.	99/2007 28-3-2007	Zandu Foundiation for Health Care, Mumbai
13.	100/2007 28-3-2007	Indian Cancer Society, Mumbai
14.	101/2007 28-3-2007	ITC Sangeet Research Academy, Kolkata
15.	147/2007 12-4-2007	Pushpawati Singhania Research Institute for Liver, Renal and Digestive Diseases, New Delhi.
16.	148/2007 12-4-2007	Centre for Development of Telematics, New Delhi
17.	164/2007 10-5-2007	All India Institute of Medical Sciences, New Delhi
18.	165/2007 10-5-2007	Vivekananda Institute of Biotechnology, West Bengal
19.	166/2007 11-5-2007	Muljibhai Patel Society for Research in Nephro Urology, Nadiad (Gujarat)
20.	167/2007 11-5-2007	Deen Dayal Research Institute, New Delhi
21.	172/2007 16-5-2007	Regional Cancer Centre, Trivandrum (Kerala)
22.	177/2007 24-5-2007	Vasantdada sugar Institute, Pune
23.	178/2007 24-5-2007	Central Power Research Institute, Bangalore
24.	179/2007 25-5-3007	Nimbkar Agricultural Research Institue (NARI), Phaltan (Maharashtra)
25.	204/2007 18-6-2007	Lilavati Kirtilal Mehta Medical Trust Research Centre, Mumbai

[Notification No. 226/2007/F. No. 203/45/2007/ITA-II]

RENU JAUHRI, Director

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 16 अगस्त, 2007

का.आ. 2367.—भारतीय स्टेट बैंक (अनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा (2क) के साथ पठित धारा 25 की उपधारा (1) के खण्ड (ग ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा श्री अमर सिंह, प्रबंधक, स्टेट बैंक आफ पटियाला को 11 मार्च, 2009 तक की अवधि के लिए अथवा उनके स्टेट बैंक आफ पटियाला के अधिकारी बने रहे तक, अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, स्टेट बैंक आफ पटियाला के निदेशक मण्डल में, अधिकारी कर्मचारी निदेशक के रूप में, पुन: नामित करते हैं । श्री अमर सिंह का कार्यकाल 11 मार्च, 2009 को यदि उस तारीख तक उनका कोई एवजी नियुक्त नहीं किया जाता है, तब भी, समाप्त हो जाएगा ।

[फा. सं. 8/8/2002-बीओ-I]

जी. बी. सिंह, उपसचिव

(Department of Financial Services)

New Delhi, the 16th August, 2007

S.O. 2367.—In exercise of the powers conferred by clause (cb) of sub-section (1) of Section 25 read with sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of India, hereby re-nominates Shri Amar Singh, Manager, State Bank of Patiala as Officer Employee Director on the Board of Directors of State Bank of Patiala for a tenure upto 11th March, 2009 or until he ceases to be an officer of State Bank of Patiala, or until further orders, whichever is earlier. The tenure of Shri Amar Singh will come to an end on 11th March, 2009 even if a replacement is not appointed by that date.

[F. No. 8/8/2002-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 20 अगस्त, 2007

का.आ. 2368.—राष्ट्रीयकृत बैंक (प्रबंन्ध एवं प्रकीर्ण उपबंध योजना, 1970/1980 के उखण्ड 3 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों को उक्त सारणी के कालम (3) में विनिर्दिष्ट व्यक्तियों के स्थान पर इसके कालम (1) में विनिर्दिष्ट बैंकों के निदेशक के रूप में तत्काल प्रभाव से और अगला आदेश होने तक नामित करती है :–

सारणी

बैंक का नाम	प्रस्तावित व्यक्ति का नाम	विद्यमान निदेशकों के नाम
1	2	3
आन्ध्रा बैंक	श्री मधुसूदन प्रसाद, संयुक्त सचिव, वित्त मंत्रालय, आर्थिक कार्य विभाग, नार्थ ब्लाक, नई दिल्ली।	श्री जी.बी. सिंह
इंडियन ओवरसीज बैंक	डॉ. शशांक सक्सेना, निदेशक (एसी एवं पेंशन), वित्त मंत्रालय, वित्तीय सेवाएं विभाग, जीवन दीप भवन, नई दिल्ली।	श्री मधुसूदन प्रसाद
विजया बैंक	श्री जी.बी. सिंह, उप सचिव (बीओ-1), वित्त मंत्रालय, वित्तीय सेवाएं विभाग, जीवन दीप भवन, नई दिल्ली ।	श्री अतुल कुमार राय

[फा. सं. 9/7/2007-बीओ-1]

जी.बी. सिंह, उप सचिव

New Delhi, the 20th August, 2007

S.O. 2368.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominate the persons specified in column 2 of the table below as Directors of the Banks specified in column 1 thereof in place of the persons specified in column 3 of the said table, with immediate effect and until further orders :—

TABLE

(1)	(2)	(3)
Andhra Bank	Shri Madhusudan Prasad, Joint Secretary, Minitry of Finance, Department of Economic Affairs, North Block, New Delhi.	Shri G.B. Singh
Indian Overseas Bank	Dr. Shashank Saksena Director (AC & Pension) Ministry of Finance Department of Financial Services, Jeevan Deep Building, New Delhi.	Shri Madhusudan Prasad
Vijaya Bank	Shri G.B. Singh Deputy Secretary (BO. I) Ministry of Finance Department of Financial Services, Jeevan Deep Building New Delhi.	Shri Atul Kumar Rai

[F. No. 9/7/2007-BO.I]

G.B. SINGH, Dy. Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा अनुभाग)

नई दिल्ली, 13 अगस्त, 2007

का.आ. 2369.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के

नियम 10(4) के अनुसरण में संचार और सूचना प्रौद्योगिकी मंत्रालय, दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है ।

महाप्रबंधक दूरसंचार जिला, भा.सं.नि.लि., करनाल

1. उपमंडल अभियन्ता (ग्रुप) निलोखेडी
2. उपमंडल अधिकारी, दूरभाष (तृतीय) करनाल
3. दूरभाष केन्द्र घरौडा (उपमंडल अभियंता समूह घरौडा)
4. उपमंडल अभियंता दूरभाष (आन्तरिक) कुरुक्षेत्र
5. मंडल अभियंता (बाह्य) करनाल
6. उपमंडल असंध (ग्रुप) असंध करनाल
7. उपमंडल अधिकारी फोन्स-1 करनाल
8. मंडल अभियंता तार (ग्रामीण) करनाल
9. उपमंडल अभियंता दूरभाष (समूह) शाहबाद (मा.) कुरुक्षेत्र
10. संप्रेषण अनुभाग करनाल

महाप्रबंधक दूरसंचार जिला, भा.सं.नि.लि., जीन्द

1. उपमंडल अभियंता (समूह) जीन्द
2. उपमंडल अभियंता समूह (सफीदो) जीन्द

महाप्रबंधक दूरसंचार जिला, भा.सं.नि.लि. फरीदाबाद

1. मंडल अभियंता, पलवल
2. मंडल अभियंता, नेहरु ग्राउन्ड, फरीदाबाद
3. मंडल अभियंता बल्लभगढ़
4. मंडल अभियंता (ई डब्ल्यू. एस.जी.) फरीदाबाद
5. मंडल अभियंता, डी.एल.एफ. बदरपुर
6. मंडल अभियंता (पूर्व) सेक्टर-16, फरीदाबाद
7. मंडल अभियंता, सेक्टर-23, फरीदाबाद

महाप्रबंधक दूरसंचार जिला, भा.सं.नि.लि. गुडगांव

1. उप मंडल अभियंता (सेक्टर-37, मानेसर) गुडगांव
2. उप मंडल अभियंता (फोन-I), गुडगांव
3. उप मंडल अभियंता (फोन-II), गुडगांव
4. उप मंडल अभियंता (सुशांत लोक व साउथ सिटी), गुडगांव
5. उप मंडल अभियंता (सेक्टर-4), गुडगांव
6. उप मंडल अभियंता (सामग्री प्रबंधन), गुडगांव
7. वरिष्ठ लेखा अधिकारी (राजस्व), गुडगांव
8. वाणिज्य अधिकारी-I, गुडगांव
9. वाणिज्य अधिकारी-II, गुडगांव
10. उप मंडल अभियंता (राजेन्द्र पार्क, पालम विहार), गुडगांव
11. उप मंडल अभियंता (डी.एल.एफ.), गुडगांव

महाप्रबंधक दूरसंचार जिला, भा.सं.नि.लि., रोहतक

1. मंडल अभियंता (बाह्य), रोहतक
2. मंडल अभियंता (ई-10बी), रोहतक
3. उप महाप्रबंधक, भिवानी
4. मंडल अभियंता, भिवानी
5. उप मंडल अभियंता (बाह्य), भिवानी
6. लेखा अधिकारी (राजस्व), भिवानी
7. उप मंडल अभियंता (वाणिज्य), भिवानी
8. उप मंडल अभियंता (आंतरिक), भिवानी
9. उप मंडल अधिकारी (समूह), भिवानी
10. उप मंडल अभियंता (समूह), तोशाम
11. उप मंडल अभियंता (फोन्स), चरखी दादरी
12. उप मंडल अभियंता चरखी दादरी (समूह), रोहतक
13. उप मंडल अभियंता (समूह), रोहतक
14. उप मंडल अभियंता (समूह), कलानौर
15. उप मंडल अभियंता (समूह), महम
16. उप मंडल अभियंता (सी डॉट/डब्ल्यू एल एल), रोहतक
17. ट्रांसमिशन सैक्शन, रोहतक
18. उप मंडल अभियंता (सामग्री प्रबंधन), रोहतक
19. उप मंडल अभियंता दूरभाष (प्रथम), रोहतक
20. उप मंडल अभियंता दूरभाष (द्वितीय), रोहतक
21. लेखा अधिकारी (राजस्व), बहादुरगढ़
22. उप मंडल अभियंता (आंतरिक), रोहतक
23. उप मंडल अभियंता (फोन्स), झज्जर, रोहतक
24. उप मंडल अभियंता (समूह), झज्जर, रोहतक
25. उप मंडल अभियंता (पूर्व), रोहतक
26. उप मंडल अभियंता (उत्तर), रोहतक
27. उप मंडल अभियंता (दक्षिण), रोहतक
28. उप मंडल अभियंता, दूरभाष (आर एल यू), रोहतक

29. वाणिज्य अधिकारी, रोहतक

30. उप मंडल अभियंता (ई-10बी), रोहतक

31. उप मंडल अभियंता (एफ आर एस), रोहतक

32. मुख्य अभियंता (सिविल), अम्बाला छावनी

[सं. ई. 11016/1/2007-रा.भा.]

बलराम शर्मा, संयुक्त सचिव (प्रशासन)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

(O.L. Section)

New Delhi, the 13th August, 2007

S.O. 2369.—In pursuance of rule 10(4) of the Official Language (Use for official purposes of the Union), rules,1976 (as amended 1987), the Central Government hereby notifies the following Offices under the administrative control of the Ministry of Communications and Information Technology, Department of Telecommunications where more than 80% of staff have acquired working knowledge of Hindi.

General Manager Telecom. District, B.S.N.L., Karnal

1. Sub Divisional Engineer (Group) Neelokheri
2. Sub Divisional Officer, Telephone (Third) Karnal
3. Telephone Exchange Ghrora (Sub Divisional Engineer Group Ghrora)
4. Sub Divisional Engineer Telephone (Internal) Kurukshetra
5. Divisional Engineer (Outer) Karnal.
6. Sub Divisional Asandh (Group) Asandh Karnal
7. Sub Divisional Officer Phones-I, Karnal
8. Divisional Engineer Telegraph (Rural) Karnal
9. Sub Divisional Engineer Telephones (Group) Shahbad (M.) Kurukshetra.
10. Despatch Section Karnal.

General Manager Telecom. District, B.S.N.L., Jind

1. Sub Divisional Engineer (Group) Jind.
2. Sub Divisional Engineer Group (Safi-2), Jind

General Manager Telecom. District, B.S.N.L. Faridabad

1. Divisional Engineer, Palwal
2. Divisional Engineer, Nehru Ground, Faridabad
3. Divisional Engineer, Ballabhgarh
4. Divisional Engineer, (E.W.S.G.), Faridabad
5. Divisional Engineer, D.L.F., Badarpur
6. Divisional Engineer (East) Sector-16, Faridabad
7. Divisional Engineer, Sector-23, Faridabad

General Manager Telecom. District, B.S.N.L. Gurgaon

1. Sub Divisional Engineer (Sector-37, Manesar), Gurgaon
2. Sub Divisional Engineer (Phones-I), Gurgaon
3. Sub Divisional Engineer (Phones-II), Gurgaon
4. Sub Divisional Engineer (Sushant Lok & South City), Gurgaon
5. Sub Divisional Engineer (Sector-4), Gurgaon
6. Sub Divisional Engineer (Store Management), Gurgaon
7. Senior Accounts Officer (Revenue), Gurgaon
8. Commercial Officer-I, Gurgaon
9. Commercial Officer-II, Gurgaon
10. Sub Divisional Engineer (Rajender Park, Palam Vihar), Gurgaon
11. Sub Divisional Engineer (D.L.F.), Gurgaon

General Manager Telecom. District, B.S.N.L. Rohtak,

1. Divisional Engineer (Outer), Rohtak
2. Divisional Engineer (E-10B), Rohtak
3. Deputy General Manager, Bhivani
4. Divisional Engineer, Bhivani
5. Sub Divisional Engineer (Outer), Bhivani
6. Accounts Officer (Revenue), Bhivani
7. Sub Divisional Engineer (Commercial), Bhivani
8. Sub Divisional Engineer (Internal), Bhivani
9. Sub Divisional Officer (Group), Bhivani
10. Sub Divisional Engineer (Group), Tosham
11. Sub Divisional Engineer (Phones), Charkhi Dadri
12. Sub Divisional Engineer, Charkhi Dadri (Group), Rohtak
13. Sub Divisional Engineer (Group), Rohtak
14. Sub Divisional Engineer (Group), Kalanaur
15. Sub Divisional Engineer (Group), Maham
16. Sub Divisional Engineer (C-DOT/WLL), Rohtak
17. Transmission Section, Rohtak

18. Sub Divisional Engineer (Store Management), Rohtak
19. Sub Divisional Engineer Telephone (First), Rohtak
20. Sub Divisional Engineer Telephone (Second), Rohtak
21. Accounts Officer (Revenue), Bahadurgarh
22. Sub Divisional Engineer (Internal), Rohtak
23. Sub Divisional Engineer (Phones), Jhajjar, Rohtak
24. Sub Divisional Engineer (Group), Jhajjar, Rohtak
25. Sub Divisional Engineer (East), Rohtak
26. Sub Divisional Engineer (North), Rohtak
27. Sub Divisional Engineer (South), Rohtak
28. Sub Divisional Engineer, Telephone (R.L.U.), Rohtak
29. Commercial Officer,Rohtak
30. Sub Divisional Engineer (E-10B), Rohtak
31. Sub Divisional Engineer (F.R.S.), Rohtak
32. Chief Engineer (Civil), Ambala Cantonment

[No. E. 11016/1/2007-O.L.]

BALRAM SHARMA, Jt. Secy. (Admn.)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 12 जुलाई, 2007

का.आ. 2370.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में—

(क) "दिल्ली विश्वविद्यालय" के सामने 'मान्यताप्राप्त आयुर्विज्ञान अर्हता' [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अंतर्गत अन्तिम प्रविष्टि और 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर ऑफ मेडिसिन (प्रसूति एवं स्त्री रोग विज्ञान)"	एम.डी. (ओ.बी.जी.) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्वविद्यालय द्वारा प्रदान की गई हो)
"प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा	डी.जी.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्वविद्यालय द्वारा प्रदान की गई हो)

[सं. यू. 12012/14/2007-एम ई (पी-II) पार्ट]

एस. के. मिश्रा, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 12th July, 2007

S.O. 2370.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against "Delhi University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Obst. & Gynae.)"	MD (O.B.G.) (This shall be a recognized medical qualification when granted by Delhi University in respect of students trained as Safdarjung Hospital, New Delhi)
"Diploma in Obst. & Gynae."	D.G.O. (This shall be a recognized medical qualification when granted by Delhi University in respect of students trained at Safdarjung Hospital, New Delhi).

[No. U. 12012/14/2007-ME(P-II)Pt.]

S.K. MISHRA, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 9 अगस्त, 2007

का. आ. 2371.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 2034 : 1987—मक्खन एवं पनीर के लिए ऊपर से खुले वृताकार सेनेट्री डिब्बे —विशिष्ट (*पहला पुनरीक्षण*)	संशोधन संख्या 1, जुलाई, 2007	31 जुलाई, 2007

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 32/टी-7]

डॉ. (श्रीमती) स्नेह भाटला, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 9th August, 2007

S. O. 2371.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl.No.	No. and year of the Indian Standard(s) amendement(s)	No. and year of the amendement	Date from which the amendment shall have effect
1.	IS 2034 : 1987 Specification for round open top sanitary cans for butter and cheese (*First Revision*)	Amendment No. 1, July, 2007	31 July, 2007

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 32/T-7]

DR. (MRS.) SNEH BHATLA, Scientist 'F' & Head (Met Engg.)

नई दिल्ली, 16 अगस्त, 2007

का.आ. 2372.—भारतीय मानक ब्यूरो (प्रमाणन) विनिमय 1988 के (5) के उप-विनिमय (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों का उनके आगे दर्शायी गयी तारीख से रद्द/स्थगित कर दिया गया है :—

2007-2008

अनुपूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम व पता	लाइसेंस के अन्तर्गतवस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द/स्थगित करने की तिथि
1.	9548905	अशोका इण्डस्ट्रीज बी-122/1 'सी' सरोजिनी नगर, कबाड़ी मार्केट, कानपुर	14105 डीपवेल हैण्डपम्प्स कम्पोनेन्ट स्टेनलस स्टील	20-06-2007
2.	9237783	क्वालिटी पम्प्स प्रा . लि., 1-बी/ए दादा नगर, कानपुर	14105 डीपवेल हैण्डपम्प्स कम्पोनेन्ट स्टेनलस स्टील	19-06-2007

[सं. सीएमडी-13 : 13]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 16th August, 2007

S.O. 2372.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by The licence cancelled/suspension	Date of cancellation/ Suspension
1.	9548905	Ashoka Industries 122/1, 'C' Sarojini Nagar, Kabari Market, Kanpur	14105 : 1994 Deepwell Handpumps Component Stainless Steel	20-06-2007
2.	9237783	Quality Pumps P. Ltd., 1-B/A, Dada Nagar, Kanpur	14105 : 1994 Deepwell Handpumps Component Stainless Steel	19-06-2007

[No. CMD/13 :13]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 16 अगस्त, 2007

का.आ. 2373.—भारतीय मानक ब्यूरो (प्रमाणन) विनिमय (5) के उप-विनिमय के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिये गये हैं, वे स्वीकृत कर दिये गए हैं :—

2007-2008

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल-	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
1	2	3	4	5	6	7	8	9
1.	9590702	18-04-2007	श्याम डेयरी प्रोडक्टस धनुआ, छाका ब्लाक रेवा रोड, इलाहाबाद	स्किम्ड मिल्क पावडर	13334	1	—	1998

1	2	3	4	5	6	7	8	9
2.	9591401	23-04-2007	श्री बाला जी स्पन पाइप्स ग्राम छतसार, पनवार, महोबा रोड, महोबा, हमीरपुर	प्रिकास्ट कंक्रीट पाइप्स (प्रबलन सहित और रहित)	458			2003
3.	9594205	08-05-2007	जल तरंग प्रोडक्टस सिंहपुर कछार, मैनावती बिठूर मार्ग, कानपुर	पैक बन्द पेय जल	14543			2004
4.	9599215	31-05-2007	भोले बाबा डेयरी इंडस्ट्रीज लि., खेरेश्वर धाम के निकट, खैर रोड, अलीगढ़	स्किम्ड मिल्क पावडर	13334	1		1998
5.	9599619	05-06-2007	जे पी सीमेण्ट प्रोडक्टस ग्राम-सदवा खुर्द, पोस्ट-कानरी (जसरा), तहसील-बारा, रेवा हाइवे, इलाहाबाद-212 107	कारुगेटेड एस्बेस्टेस सीमेंट की चादरें	459			1992
6.	9601778	13-06-2007	श्री कृष्णा बेवरेजेस ई-54, साइट-ए, इण्डस्ट्रियल एरिया, मथुरा	पैकबन्द पेय जल	14543			2004
7.	9607487	27-06-2007	श्रीनाथ ज्वेलर्स 59/37 बिरहाना रोड, कानपुर	स्वर्ण एवं स्वर्ण धातु, आभूषण/आर्टीफैक्टस फाइननेस एवं मार्किंग	1417			1999
8.	9607588	27-06-2007	पुष्पांजलि ज्वेलर्स 38/9 ओल्ड विजय नगर कालोनी, विजय क्लब के निकट आगरा	स्वर्ण एवं स्वर्ण धातु, आभूषण/आर्टीफैक्टस फाइननेस एवं मार्किंग	1417			1999
9.	9608186	28-06-2007	डिलाइट इण्टरप्राइजेज प्रा. लि., प्लाट नं. 321, 323 एवं 325, रनिया, कानपुर नगर	डीपवेल हैण्डपम्प्स कम्पोनेन्टस एवं विशेष औजार	15500	2		2004
10.	9608287	28-06-2007	स्वास्तिक पाइप्स लि., ग्राम कोटवां, कोसी कलां, 97वां मील का पत्थर एनएच-2, मथुरा	टयूबलर स्टील पोल्र्स उपरगामी उर्जा लाइनों हेतु	2713	1-3	–	1980
11.	9611377	13-07-2007	संगम स्ट्रक्चर्ल्स लि., (कफर्नेस विभाग), ए-29, यूपीएसआईडीसी औद्योगिक आस्थान नैनी, डाकखाना-टीएसएल, (नैनी), इलाहाबाद-211 010	सामान्य संरचना कार्यों के लिए इस्पात	2062			1999
12.	9612581	23-07-2007	डी पी ज्वेलर्स 59/4-ए, बिरहाना रोड, कानपुर	स्वर्ण एवं स्वर्ण धातु, आभूषण/आर्टीफैक्टस	1417			1999
13.	9612682	23-07-2007	डी पी ज्वेलर्स 59/4-ए, बिरहाना रोड, कानपुर	रजत एवं स्वर्ण धातु, आभूषण/आर्टीफैक्टस	2112			2003

[सं. सीएमडी-13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 16th August, 2007

S.O. 2373.—In pursuance of Sub-regulation (5) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the **grant of licences** particulars of which are given in the following schedule :

Sl. No.	Licences No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Sec	Year
1	2	3	4	5	6	7	8	9
1.	9590702	18-04-2007	Shyam Dairy Products Dhauna, Chaka Block, Rewa Road, Allahabad	Skimmed Milk Powder	13334	1		1998
2.	9591401	23-04-2007	Shri Bala Ji Spun Pipes Village : Chatesar, Panwar, Mahoba Road Mahoba, Hamirpur	Precast Concrete Pipes (With & without Rainforcement)	458			2003
3.	9594205	08-05-2007	Jal Tarang Products Singhpur Kachchar, Mainawati Bithoor Marg, Kanpur	Packaged Drinking Water	14543			2004
4.	9599215	31-05-2007	Bhole Baba Dairy Industries Ltd., Near Khaireshwar Dham, Khair Road, Aligarh	Skimmed Milk Power	13334	1		1998
5.	95959619	05-06-2007	Jaypee Cement Products (A Unit of Jaiprakash Associates Ltd.), Vill : Saduakhurd, Post : Kanri (Jasra) Teh : Bara, Rewa Highway, Allahabad	Corrugated and semi-corrugated asbetos Cement Sheets	459			1992
6.	9601778	13-06-2007	Shri Krishna Bevarages E-54, Site-A, Industrial Area, Mathura	Packaged Drinking Water	14543			2004
7.	9607487	27-06-2007	Shree Nath Jewellers 59/37, Birhana Road, Kanpur	Gold & Gold Alloys, Jewellery/Artefacts Fineness & Marking	1417			1999
8.	9607588	27-06-2007	Pushpanjali Jewellers 38/9, Old Vijay Nagar Colony, Near Vijay Club Agra	Gold & Gold Alloys, Jewellery/Artefacts Fineness & Marking	1417			1999
9.	9608186	28-06-2007	Delight Enterprises Pvt. Ltd., Plot No. 321, 323, 325 Raina, Kanpur Nagar	Deepwell Handpumps Components and special Tools	15500	2		2004
10.	9608287	28-06-2007	Swastik Pipes Ltd., Village : Kotwan, Kosi Kalan, Mile Stone 97, NH-2 Mathura	Tubler Steel Poles for Overhead Power Lines	2713	1-3		1980

1	2	3	4	5	6	7	8	9
11.	9611377	13-07-2007	Sangam Structurals Ltd., (Furnace Div.) A-29, UPSIDC Indl. Area, Naini, P.O. TSL (Naini), Allahabad-211010	Steel for General Structural Purpose	2062			1999
12.	9612581	23-07-2007	D. P. Jewellers 59/4-A, Birhana Road, Kanpur-208 001	Gold & Gold Alloys, Jewellery/Artefacts Fineness & Marking	1417			1999
13.	9612682	23-07-2007	D. P. Jewellers 9/4-A, Birhana Road, Kanpur-208 001	Silver & Silver Alloys, Jewellery/Artefacts Fineness & Marking	2112			2003

[No. CMD/13 :11]

A. K. TALWAR, Dy. Director General (Marks)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 16 अगस्त, 2007

का.आ. 2374.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रम इंजीनियर्स इंडिया लिमिटेड के निम्नलिखित कार्यालयों को अधिसूचित करती है ।

1. इंजीनियर्स इंडिया लिमिटेड,
गांधार आयल फील्ड, गांधार,
डाकघर चचवल, तहसील वोगड़ा,
जिला भड़ौच-392140 (गुजरात)
2. इंजीनियर्स इंडिया लिमिटेड,
ओएनजीसी, डाकघर उरण
जिला रायगढ़-400702 (महाराष्ट्र)
3. इंजीनियर्स इंडिया लिमिटेड,
मथुरा रिफाइनरी,
मथुरा-281004 (उत्तर प्रदेश)

[संख्या-11011/1/2007 (हिन्दी)-भाग-1]

जानकी आहूजा, उप-निदेशक (रा. भा.)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 16th August, 2007

S. O. 2374.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official purpose of the Union) Rules, 1976, the Central Government hereby denotifies the following offices of the Public Sector Undertaking, Engineers India Limited.

1. Engineers India Limited,
Gandhar Oil Field, Gandhar,
Post Chachval, Tehsil Vogara
Distt. Bharauch-392140
(Gujarat)
2. Engineers India Limited,
ONGC, Post Uran
Distt. Raigarh-400702
(Maharashtra)
3. Engineers India Limited,
Mathura Refinery
Mathura-281004 (U.P.)

[No. 11011/1/2007 (Hindi)-Part-I]

JANKI AHUJA, Director (OL)

नई दिल्ली, 17 अगस्त, 2007

का.आ. 2375.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी भारत सरकार पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 497 तारीख 09 फरवरी, 2007 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गेल (इण्डिया) लिमिटेड द्वारा राजस्थान राज्य में विजयपुर-कोटा एवं स्पर पाइपलाइन परियोजना के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाईन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 04-04-2007 से 08-04-2007 तक उपलब्ध करा दी गई थी;

और पाइपलाईन बिछाने के संबंध में जनता से कोई आक्षेप प्राप्त नहीं हुए;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाईनें बिछाने के लिए अपेक्षित हैं, उस में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइलाईनें बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निर्देश देती है कि पाइपलाईनें बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख को, केन्द्रीय सरकार में निहित होने की बजाए, पाइपलाईनें बिछाने का प्रस्ताव करने वाली गेल (इण्डिया) लिमिटेड में निहित होगा और तदुपरि, भूमि में ऐसे उपयोग का अधिकार, इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी विल्लंगमों से मुक्त, गेल (इण्डिया) लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	गाँव	सर्वे नं.	आर.ओ.यू. अर्जित करने के लिए क्षेत्रफल (हैक्टेयर में)
कोटा	दीगोद	ककरावदा	197	0.3480
			215/235	0.6360
			173	0.0880
			योग	1.0720
		पाचडा	264	0.2400
			278	0.0700
			276	0.4080
			274	0.2160
			273	0.1080
			271	0.2400
			223	0.1000
			32	0.2400
			31	0.2520
			योग	1.8740

[फाइल सं. एल--14014/16/06-जी.पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 17th August, 2007

S.O. 2375.—Whereas by notification of Government of India in Ministry of Petroleum and Natural Gas number S.O. No. 497 dated 09th February, 2007 issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transport of natural gas through Vijaipur-Kota and spur pipeline project in the State of Rajasthan by GAIL (India) Limited;

And whereas copies of the said Gazette notification were made available to the public from 04-04-2007 to 08-04-2007;

And whereas no objections were received from the public to the laying of the pipeline;

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government;

And whereas the Central Government has, after considering the said report, decided to acquire the Right of User in the lands specified in the Schedule;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the land specified in the Schedule is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on this date of the publication of the declaration, in GAIL (India) Limited, free from all encumbrances.

Schedule

Distt.	Tehsil	Village	Servey No.	Area to be acquired for ROU (in Hectare)
Kota	Digod	Kakrawda	197	0.3480
			215/235	0.6360
			173	0.0880
			Total	1.0720
		Pachada	264	0.2400
			278	0.0700
			276	0.4080
			274	0.2160
			273	0.1080
			271	0.2400
			223	0.1000
			32	0.2400
			31	0.2520
			Total	1.8740

[F. No. L-14014/16/06-G.P.]

S. B. MANDAL, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 21 अगस्त, 2007

का. आ. 2376.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किये जाने की संभावना है।

अत: अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इसमें कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र का रेखा सं. 09/एन.टी.पी.सी./सेक्शन 4(1)/दुलंगा/07 दिनांक 15 मार्च, 2007 का निरीक्षण, महाप्रबंधक, कोल माइनिंग, एन.टी.पी.सी., प्रथम तल, पी डी आई एल बिल्डिंग, सैक्टर-1, नोएडा, उत्तरप्रदेश-201 301 या परियोजना प्रमुख का कार्यालय, एन.टी.पी.सी. लिमिटेड, लक्ष्मी भवन, मैन रोड, बहरामल, जिला-झारसूगुड़ा, उड़ीसा पिन-768203 या मुख्य महाप्रबंधक (खोज प्रभाग), सेन्ट्रल माइन्स प्लानिंग एण्ड डिजाइन इंस्टीट्यूट, गोंडवाना प्लेस, कांके रोड, रांची या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट कोलकाता अथवा जिला कलेक्टर और मजिस्ट्रेट, जिला सुन्दरगढ़, उड़ीसा के कार्यालय में किया जा सकता है;

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति, उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्टों/और अन्य दस्तावेजों को परियोजना प्रमुख, दुलंगा माईनिंग प्रोजेक्ट, एन.टी.पी.सी. लिमिटेड, लक्ष्मी भवन, मैन रोड, बहरामल, जिला-झारसूगुड़ा, उड़ीसा पिन-768203 को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन में भेजेंगे।

अनुसूची

दुलंगा कोल माईनिंग ब्लाक
जिला-सुन्दरगढ़ (उड़ीसा)

रेखांक सं. 09/एन.टी.पी.सी./सेक्शन 4(1)/दुलंगा/07 तारीख 15-03-2007

क्रम सं.	ग्राम का नाम	थाना	ग्राम सं.	जिला	क्षेत्रफल हेक्टेयर में (लगभग) हेक्टेयर	एकड़	टिप्पणी
1.	दुलंगा	हेमगिर	105	सुन्दरगढ़	97.75	241.54	भाग
2.	मनोहरपुर	हेमगिर	106	सुन्दरगढ़	8.25	20.39	भाग
3.	कथापल्ली	हेमगिर	108	सुन्दरगढ़	48.81	120.61	भाग
4.	बेलडीही	हेमगिर	111	सुन्दरगढ़	267.12	660.05	भाग
5.	कुन्तीझरिया	हेमगिर	113	सुन्दरगढ़	33.22	82.09	भाग
6.	झझापाड़ा	हेमगिर	112	सुन्दरगढ़	97.56	241.07	भाग
7.	संरक्षित वन	हेमगिर		सुन्दरगढ़	103.43	255.58	भाग
				कुल योग	**656.14 (लगभग)**	**1621.32 (लगभग)**	

सीमा वर्णन :

रेखा क-ख :— यह रेखा ग्राम कथापल्ली (ग्राम सं. 108) के पूर्वी भाग के पास स्थित बिन्दु "क" से आरंभ होकर उत्तर पूर्व दिशा में बढ़ती हुई उक्त ग्राम के उत्तरी सीमा को काटती हुई ग्राम मनोहरपुर (ग्राम सं. 106) से होती हुई ग्राम दुलंगा (ग्राम सं. 105) की पूर्वी सीमा से गुजरती है और ग्राम दुलंगा के उत्तरी भाग में स्थित बिन्दु "ख" पर समाप्त होती है।

रेखा ख-ग :— यह रेखा ग्राम दुलंगा के उत्तरी भाग में बिन्दु "ख" से प्रारंभ होकर दक्षिण-पूर्व दिशा में बढ़ती हुई ग्राम दुलंगा की पूर्वी सीमा को काटती हुई ग्राम झांझापाड़ा (ग्राम सं. 112) से होते हुए उक्त ग्राम की पश्चिमी सीमा को काटती है और ग्राम कुन्तीझरिया (ग्राम सं. 113) के उत्तरी पूर्वी भाग में स्थित बिन्दु "ग" पर समाप्त होती है।

रेखा ग-घ :— यह रेखा ग्राम कुन्तीझरिया (ग्राम सं. 113) के उत्तरी-पूर्वी भाग में स्थित बिन्दु "ग" से प्रारंभ होकर दक्षिण-पश्चिम दिशा में बढ़ती हुई ग्राम कुन्तीझरिया की दक्षिणी सीमा को काटती हुई गिरी पहाड़ (संरक्षित वन) से होते हुए ग्राम बेलडीही (ग्राम सं. 111) में पूर्वी सीमा से प्रवेश करती है और उक्त ग्राम की पश्चिमी सीमा को काटती है तथा गिरी पहाड़ (सं. वन) में स्थित बिन्दु "घ" पर समाप्त होती है।

रेखा घ-क :— यह रेखा गिरी पहाड़ (सं. वन) स्थित बिन्दु "घ" से प्रारंभ होकर उत्तर-पश्चिम दिशा में बढ़ती हुई ग्राम बेलडीही की दक्षिणी सीमा से गुजरती हुई इसके पश्चिमी सीमा को काटती है और अंतिमत: ग्राम कथापल्ली की दक्षिणी सीमा के पास ग्राम कथापल्ली (ग्राम सं.108) के पूर्वी भाग के पास में स्थित बिन्दु "क" पर समाप्त होती है।

[मिसिल सं. 43015/7/2006/पीआरआईडब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL

New Delhi, the 21st August, 2007

S.O. 2376.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisitions and Development) Act,1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein;

The Plan bearing number 09/NTPC/SEC-4(1)/DULANGA/07 dated 15th March,2007 of the area covered by this notification can be inspected in the office of the General Manager, Coal Mining, NTPC Ltd., 1st Floor, PDIL Building, Sector-1, NOIDA-201 301 or at the office of the Project Head, Dulanga Coal Mining Project, NTPC Ltd. Laxmi Bhawan, Main Road, Behramal, District Jharsuguda, Orissa-768203; or at the office of Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Godwana Place, Kanke Road, Ranchi or at the office of the Coal Controller, 1 Council House Street, Kolkata or at the office of the Coal Controller, 1 Council House Street, Kolkata or at the place of the District Collector and Magistrate, Dist. Sundargarh, Orissa.

All persons interested in the lands covered by this notification shall deliver all maps, chart and other documents referred to in sub-section (7) of Section 13 of the said Act to the Project Head, Dulanga Coal Mining Project, NTPC Ltd. Laxmi Bhawan, Main Road, Behramal, District Jharsuguda, Orissa-768203 within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Dulanga Coal Mining Block
Distt. Sundargarh, Orissa

Plan No. 09/NTPC/Sec 4(I)/Dulanga/07 dated 15-03-2007

Sl. No.	Village	Thana	Village number	District	Area (in hectares approximately)	Area (in acres approximately)	Remarks
1.	Dulanga	Hemgir	105	Sundergarh	97.75	241.54	Part
2.	Manoharpur	Hemgir	106	Sundergarh	8.25	20.39	Part
3.	Kathapali	Hemgir	108	Sundergarh	48.81	120.61	Part
4.	Beldehi	Hemgir	111	Sundergarh	267.12	660.05	Part
5.	Kuntijharia	Hemgir	113	Sundergarh	33.22	82.09	Part
6.	Majhapada	Hemgir	112	Sundergarh	97.56	241.07	Part
7.	Reserve Forest	Hemgir		Sundergarh	103.43	255.58	Part
				Total area	**656.14 (hectares approximately)**	**1621.32 (acres approximately)**	

Boundary Description :

Line A-B : The line starts from point "A", near the eastern part of village Kathapali (village no.108) and moving the north-east direction cuts the northern boundary of the said village,passes through the village Manoharpur (village No. 106), the western boundary of village Dulanga (vill. No. 105) and ends at point "B" in the northern part of the village Dulanga.

Line B-C : The Line starts at point "B" in the northern part of village Dulanga and moving in the south-east direction cuts the eastern boundary of village Dulanga, passes through village Majhapada (Village No. 112), cuts the western boundary of the said village and ends at point "C" in the north-eastern part of village Kuntijharia (Vill. No. 113).

Line C-D : The line starts at point "C" in the north-eastern part of village Kuntijharia (vill no. 113), moves in the south-west direction cuts the southern boundary of the village Kuntijharia, passes through the Giripahad (R.F.) enters the village Beldihi through its eastern boundary, cuts the western boundary of the said village and finally ends at the point "D" in the Giripahad (R.F.)

Line D-A : The line starts at "D" in the Giripahad (R.F.), moves in the north-west direction enters the southern boundary of village Beldihi cuts its northern boundary and finally ends at point "A" near the southern boundary of village Kathapali near the eastern part of village Kathapali (vill. No. 108).

[No. 43015/7/2006/PRIW-I]

M. SHAHABUDEEN, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैरीसन इंजीनियर, एम ई एस, कोच्चि के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरनाकुलम के पंचाट (संदर्भ संख्या 116, 101, 102, 104, 106 से 111 तक, 115, 30, 36/2006)को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-14012/60/2003-आई आर (डी. यू.),
एल-14012/87, 89, 79, 81, 82, 83, 86, 88, 94/2002-आई आर (डी. यू.),
एल-14012/51, 35, 34/2003-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th July, 2007

S.O. 2377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.116, 101, 102, 104, 106 to 111, 115, 30, 36/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garrison Engineer, MES, Kochi and their workmen, received by the Central Government on 30-7-2007.

[No. L-14012/60/2003-IR (DU),
L-14012/87, 89, 79, 81, 82, 83, 86, 88, 94/2002-IR (DU),
L-14012/51, 35, 34/2003-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri P. L. Norbert,
B. A., L. L. B., Presiding Officer

(Tuesday the 17th day of July, 2007 / 26th Ashada, 1929)

I. D. Nos. 116/2006, 101/2006, 102/2006, 104/2006, 106/2006, 107/2006, 108/2006, 109/2006, 110/2006,111/2006,115/2006,30/2006 & 36/2006

I. D. 116/2006

(I. D. 20/2004 of Labour Court, Ernakulam)

Workman	A.N. Sathyan Azhuveliparambil House Kadavanthra Kochi-682 020.
	Adv. Shri T. Saji.
Management	The Garrison Engineer E/M Military Engg. Service, Naval Base Kochi-4.
	Adv. Shri K.S. Dilip.

I. D. 101/2006

(I. D. 10/2003 of Labour Court, Ernakulam)

Workman	N.E. Vinu Nammanary House Malayidamthuruthu Edathala PO Aluva.
	Adv. Shri T. Saji.
Management	The Garrison Engineer E/M Military Engg. Service, Naval Base Kochi-4.
	Adv. Shri K. S. Dilip.

I. D. 102/2006

(I.D.12/2003 of Labour Court, Ernakulam)

Workman	K. R. Gopalakrishnan Kakkattuputhenchira Karathy South P. O. Thrissur -680 308.
	Adv.Shri T. Saji.
Management	The Garrison Engineer E/M Military Engg. Service, Naval Base Kochi-4.
	Adv.Shri K.S. Dilip.

I. D. 104/2006

(I. D.14/2003 of Labour Court, Ernakulam)

Workman	V. B. Murali Vallonchathandu, Eloor North Udyogamandal-683 501
	Adv. Shri T. Saji.
Management	The Garrison Engineer E/M Military Engg. Service, Naval Base Kochi-4.
	Adv. Shri K.S. Dilip.

I. D. 106/2006

(I.D.16/2003 of Labour Court, Ernakulam)

Workman	Suresh Babu T. G. Theroth House Oachanthuruthu P. O. Kochi -682 588
	Adv. Shri T. Saji.
Management	The Garrison Engineer E/M Military Engg. Service, Naval Base Kochi-4.
	Adv. Shri K. S. Dilip.

I. D. 107/2006

(I.D.17/2003 of Labour Court, Ernakulam)

Workman	Pradeesh K. V. Pulluvalnilath] Chandiroor P.O., Cherthala Alapuzha Distt.
	Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K. S. Dilip.

I.D. 108/2006

(I.D.18/2003 of Labour Court, Ernakulam)

Workman — John Paul C.G.
Chakkalakkal House
Keerthi Nagar Road Elamakkara
Kochi -682 026
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K. S. Dilip.

I.D. 109/2006

(I.D.19/2003 of Labour Court, Ernakulam)

Workman — C.V. Eldo
Cherakakuzhy House
Kattichal, Mannady P.O.
Nilgiris -643 339.
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K.S. Dilip.

I.D. 110/2006

(I. D.20/2003 of Labour Court, Ernakulam)

Workman — K.P. Gireesh
Kochanjalikkal House
Madabhagom, Palluruthy
Kochi -682 006.
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K.S. Dilip.

I.D. 111/2006

(I.D. 30/2003 of Labour Court, Ernakulam)

Workman — N. Harikumar
Vadakara Chellam veedu
Varanad P.O., Cherthala
Alapuzha Distt.
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K.S. Dilip.

I.D. 115/2006

(I.D.192003 of Labour Court, Ernakulam)

Workman — Roy P.C.
Puthiyodathu House
Eroor West P.O.
Thrippunithura -682 306
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K.S. Dilip.

I.D. 30/2006

(I.D. 2/2004 of Labour Court, Ernakulam)

Workman — P.S. Vinod Kumar
Sreebhavan Kummanam
Kottayam Distt.
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K. S. Dilip.

I.D. 36/2006

(I.D. 9/2004 of Labour Court, Ernakulam)

Workman — Manoj Avarachan
Koonthan House
Thannippuzha, Okkal P.O.
Ernakulam Distt.
Adv. Shri T. Saji.

Management — The Garrison Engineer E/M
Military Engg. Service, Naval Base
Kochi-4.
Adv. Shri K.S. Dilip.

AWARD

These are references made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is common in all the cases except ID. 116/2006. It is as follows :

"Whether the demand of Shri ..... from the management of Garrison Engineer (E/M), MES, Naval Base, PO Cochin for reinstatement and regularisation of his service is just and fair? If so, to what relief is the workman entitled?"

The reference in ID. 116/2006 is :

"Whether the contract awarded by the management of Garrison Engineer, E/M, Military Engineering Service, Naval Base, Southern Command, Cochin to M/s Chitoor Engineering Industries is sham? If so, whether the demand of Shri A. N. Sathyan, workman for regular absorption in the establishment of the Garrison Engineer, E/M, Military Engineering Service, Naval Base, Southern Naval Command, Cochin is justified? If so, to what relief the workman is entitled?"

2. Since the facts and evidence are common these cases are tried together treating I.D. 116/2006 as the leading case and evidence is adduced in that case.

3. The facts of the case in brief are as follows :

The workmen contend that they were working as pump operators, liftmen, etc. in Garrison Engineer, E/M, MES Naval Base, Cochin some since 1991 and others subsequently. They were engaged through contractors. Even though contractors changed the workers remained the same. The contract arrangement was a sham

arrangement. The workers were actually engaged by the management and were working under the supervision and control of the management. The wages were received by contractors from the Department and a portion of the same was disbursed to the workmen. The workers were made to work continuously without holidays and for long hours without break. However many of the benefits enjoyed by regular workers were denied to these workers. When the workmen demanded regularisation and filed O. A. 208/2001 before Central Administrative Tribunal the management started terminating the service of the workmen. All the workers have worked more than 240 days in a year. The work is of perennial nature. The workers are entitled for reinstatement and regularisation with back wages and other consequential benefits.

4. According to the management none of the workmen were employed by the management. There is no employer-employee relationship between them. The management award work to contractors who submit the lowest quotation. The management has no role in the engagement and termination of the service of workmen. It is the contractor who employed the workmen. The management had no control over the workers. If the workers have any grievance they have to approach the contractors. The work entrusted to contractors was of temporary nature and on completion of the work the management used to issue completion certificate to the contractors. The management has not adopted any unfair labour practice. It is not correct to say that the workers were made to work 12-14 hours a day. There is no chance for continuous employment. The agreement between the contractors and Department stipulates that neither the contractors nor their labourers would be entitled for jobs in the Department either permanently or temporarily. The workers have not worked under the management and hence they are not entitled either for reinstatement or for regularisation.

5. In the light of the above contentions the following points arise for consideration:

(1) Whether the contract is sham?

(2) Are the workers entitled for reinstatement and absorption?

The evidence consists of the oral testimony of WW1 and documentary evidence of Exts. W1 to W15 on the side of workers and no evidence on the side of management.

6. Point No. (1):

The workers in all these cases were engaged through contractors for different types of work like Pump Operator, Diesel Engine Operator, Liftman etc. in the Garrison Engineer, Naval Base, some from 1991 and others on different dates such as 1992, 95, 96, 2000 etc. Their services were terminated on 20-2-2002. Though in the claim statement it is admitted that they were engaged through contractors initially, the contract was sham and actually they were working under the management. They were supervised and controlled by the management and not by the contractor. They were given passes by the management. Even though contractors went on changing the workers remained the same. The management denies this contention of the workers. According to them they have nothing to do with the workers. The work was allotted to different contractors. It is the contractors who used to bring workers and complete the work. The workers were paid by the contractors and they were controlled and supervised by the contractors. For the purpose of entry into Naval Base passes are required and such passes were issued from the Department at the request of contractors to the workers.

7. In order to show that the contract is sham, except the photopasses of the workers no other documents are produced. One of the workers was examined as WW1. He admitted in the cross-examination that all the workers worked under contractors and someone claimed to be contractor's man used to pay wages to them. There is absolutely no evidence regarding the nature of supervision and control. There is no record or evidence on the side of the workers to show that officers of Garrison Engineer used to give direction and they were controlled and supervised by the management. Just because the workers continued even when contractors changed it does not necessarily follow that the workers were engaged by the management or they were controlled and supervised by the management. Being experienced workmen in different sections successive contractors would have preferred to engage the same workers. It is the burden of the workers to show that despite their initial engagement by contractors they were actually working under the supervision and control of management. Admittedly their wages were paid not by Garrison Engineer, but by the contractors through their agents or supervisors. Exts. W1 to 4 and 6 to 15 series are photopasses of the workers. They show that they were engaged through contractors and the names of contractors are mentioned. One of the main contractors was M/s Weltron Engineering Services, Cochin -18. The name of contractor is mentioned in the photopass. The photopasses show that the workers were engaged through contractors. Passes are issued to enter the Naval Base being a protected area. That will not in any way improve the case of the workers that management had directly engaged them. There is equally no evidence to show that the work they were doing is of perennial nature. Assuming so, without anything more on record it is not possible to conclude merely on the ground that the work is of perennial nature the workers are the employees of the management. Reliance was placed by the learned counsel for the workers in Ext. W5. It is a request from the office of Assistant Garrison Engineer to security officer to issue photopasses to workers mentioned in the letter for a period of 3 days from 18-9-1999 to 20-9-1999. According to the learned counsel during this 3 days' period there was no contract but the workers were allowed to work and it reveals that the workers were actually working under the management. As already mentioned, Ext. W5 itself describes the workers as labourers of contractor. Ext. W5 in no way helps the workers to show that they were engaged by the management. The workers have no case that any benefit like provident fund, gratuity, bonus etc. were paid by the management at any time. Even the wages itself, admittedly, is paid by the contractor. That being the position there is absolutely no evidence to accept the contention of the workers that the contract is sham.

8. **Point No. (2) :**

In view of the above finding the question of absorption in Garrison Engineer does not arise. However the workers content that they were working continuously for 240 days and more in an year and hence they are entitled for reinstatement at least as casual workers. Again the question rebound to the same position as aforementioned. Even if they have worked 240 days continuously they are not workers of management, but only of the contractors. Unless they maintain employer-employee relationship they would not fall under the definition of 'workman' in S-2(s) of Industrial Disputes Act. Even to prove continuous service of 240 days there is no evidence. No records are called for from the management. Even if the records prove continuous service the grievance of the workers is to be redressed by the contractors and not by the management as they were working under contractor. No right whatsoever has accrued to the workers either for reinstatement or for absorption or for any monetary benefits within the provisions of I.D. Act.

9. Lastly it was contended by the workmen that as per the scheme of 1993 they can be absorbed by the management. But the learned counsel for the management submits that the scheme is applicable only to casual workers taken directly by the management and not applicable to workers under contractors. Being purely contract labour, solely managed by contractors the workers do not acquire any kind of right for employment in management.

10. In the result, an award is passed finding that the contract between management and contractors is not sham and the demand of workers for reinstatement and regularisation is not justifiable. The workers are not entitled for any relief. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 17th day of July, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman :

WW1 - Shri A.N. Sathyan- 8-6-2007.

Witness for the Management :

Nil.

Exhibits for the Workman:

W1 to 4 series -	Photopasses issued to the workers.
W5.	Copy of letter dated 18-9-1999 issued by Management to security officer for issue of temporary identity passes.
W 6 to 15 series-	Photopasses issued to the workers.

Exhibits for the Management:

Nil.

नई दिल्ली, 30 जुलाई, 2007

का. आ. 2378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विदेश संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 8/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-40011/27/2001-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2002) of the Central Government Industrial Tribunal-Cum-Labour Court, No. II New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Videsh Sanchar Nigam Ltd. and their workman, which was received by the Central Government on 30-7-2007.

[No. L-40011/27/2001-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT NEW DELHI

Presiding Officer : Shri R. N. RAI

I. D. No. 8/2002

PRESENT :

Sh. B. Mund —1st Party

Smt. Sangeeta Jain —2nd Party

In the Matter of :—

Shri Roop Chand,
C/o. Sh. M.P. Singh, Advocate,
Chamber No.B-134,
Baba Guru Chand Singh Block, Tis Hazari Court,
New Delhi - 110 054.

Versus

The Chief General Manager,
VSNL, Greater Kailash, Part -II,
New Delhi - 110 048.

AWARD

The Ministry of Labour by its letter No.L-40011/27/2001-IR (DU) Central Government dt. 07/23-01-2002 has referred the following point for adjudication —

The point runs as hereunder :

"Whether the action of the General Manager, Videsh Sanchar Nigam Limited, Greater Kailash, Part -II, New Delhi - 110 048 in verbally stopping from duty

w.e.f. 31-10-1999 to Shri Roop Chand, Lift Operator, instead of regularizing his services and not paying him wages as per their regular employee, is justified? If not, to what relief the workman is entitled to?"

The workman-applicant has filed claim statement. In the claim statement it has been stated that the workman was employed with the above said management of M/s. VSNL since 8-7-1998 as a Lift Operator and his last drawn salary was Rs. 2200 per month, which was more less than minimum wages as per the Labour Laws.

That the workman was working with much sincerity, honestly and laboriously with the above said management during the course of his employment with the above said management and the performance of his duties to entire satisfaction of the management and its officials. The workman did not give any chance of complaint to the management as well as its officials during his tenure.

That during the course of the employment of the workman, the management did not provide him all the legal benefits as per provisions of the labour laws of the land as passed from time to time such as appointment letter, annual leaves, casual leaves, ESI, PF, Minimum Wages, Overtime in double etc. for which the workman is entitled to get from the management and to which the workman demanded several, times orally but the management did not pay any heed to the demands of the workman, which was legal.

That when the demands of the legal benefits were not stopped by the workman, then the management got annoyed with the workman and on 31-10-1999, the management terminated the services of the workman illegally and without assigning any proper rhyme and reason and also without paying the earned salaries of the workman for the months of August, September and October, 1999.

That thereafter, the workman visited premises of the management for his reinstatement and the workman also requested the Chairperson of the management to reinstate him and demanded his earned salaries for the month of August, September and October, 1999 but the Chairperson of the management did not pay any heed to the requests of the workman and the workman was driven out from the office of the Chairperson of the management.

That when the workman totally unable to receive his earned salaries and reinstatement on his old service, left with no alternative, the workman was compelled to serve a demand notice upon the management for his reinstatement with full back wages and for the payment of his earned salaries as mentioned but the management neither complied nor replied with the said demand notice of the workman.

That thereafter, the workman had approached the Conciliation Officer, but the management did not co-operate in the conciliation proceedings before the office of the Conciliation Officer, hence the Conciliation Officer referred the present dispute before this Hon'ble Court for proper adjudication, hence this statement of claim.

That the termination of the workman from his services is totally illegal, unlawful, arbitrary and against all the canons of labour laws of the land to which the workman strictly opposed.

That since the date of illegal termination, the workman is totally unemployed as he has tried his best to avail any suitable job to earn his livelihood, but he was unable to find any suitable job till date due to which his financial position has grown to much critical so at present. The workman has no proper source of income and presently he is living on the mercy of the near relatives, family members and friends.

It is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to pass an award in favour of the workman and against the management, thereby management be directed to reinstate the workman on his services and pay him all full back wages from the date of termination. It is further prayed that the management be also directed to pay the earned salaries of the workman for the month of August, September and October, 1999 in the interest of justice.

The management has filed written statement. In the written statement it is stated that it is incorrect and denied that the workman was employed with the above said management of M/s. VSNL since 8-7-1998 as a Lift Operator and his last drawn salary was Rs. 2200 per month which was much less than minimum wages as per the labour laws. As stated in the preliminary objections, the workman was not employed by the management at any point of time on its roll. The workman was used only for incidental/ occasional help by the management firstly in October, 1998 to December, 1998 and secondly on 15-04-1999 to 15-6-1999 and the workman was paid the amount in cash on his hand and he signed the receipts for work done during the aforesaid period. No appointment letter was issued to him any time. The workman, signed the said hand receipt under his name written as Roop Chand as well as Roop Singh.

It is further submitted that two Lifts in the new building of the management of Greater Kailash-I, New Delhi were under the supervision and for operation and cleaning of said Lifts under supervision, the workman was occasionally used for the said period for the said incidental/ occasional help and work.

The workman was not having the Identity Card or Entry Pass from the management. In reply to the alleged documents placed on record by the workman relating to the i.e. Gate Passes etc. it is submitted that M/s. OTIS Limited supplier of both the aforesaid passenger lifts was providing maintenance of both the Lifts since beginning and the workman was frequently visiting with M/s. OTIS's

Technician. The occasional service/Gate Entry Pass was given to the said OTIS's Technicians for taking items out of the office of the management for attending faults as and when required. Both the Lifts are users friendly and does not need any expertise. These gate passes for taking out material were issued in favour of M/s. OTIS Limited, who are doing maintenance work of both the lifts.

It is submitted that M/s. OTIS Limited might have hired the workman for their own work. The gate passes are being issued to the M/s. OTIS Limited and not to workman in his personal capacity and it is submitted that the workman has mischievously and wrongfully tampered with the gate passes by writing Lift Operator etc. below his name after getting it signed from the management.

That the workman was not employed by the management. As workman was not the employee of the management, hence no question arises of workman working with the management during the course of his employment as alleged. There was no employment of the workman with the management.

That all false, misconceived, concocted and bogus allegations have been levelled by the workman just for the sake of allegations and have no substance in them. The workman was used only occasionally for the period as mentioned aforesaid i.e. firstly in October, 1998 to December, 1998 and secondly on 15-04-1999 to 15-06-1999 for incidental help required in operating two lifts under supervision in new building of management at Greater Kailash-I, New Delhi. The workman was paid for his work done for the said period. It is incorrect and denied that on 31-10-1999, the management terminated his service illegally and without assigning any proper rhyme and reason and also without paying the earned salaries of the workman for the months of August, September and October, 1999 as alleged. In view of the averments and submissions made aforesaid no question arises of any illegal termination much less termination of the services as alleged by the workman or not paying any salaries as alleged.

That it is incorrect and denied that termination of the workman from his services is totally illegal, unlawful, arbitrary and against all the cannons of the labour laws of the land and in reply thereof contents and averments made in the aforesaid paragraphs may be read, referred to and replied upon.

The workman applicant has filed rejoinder. In the rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers and the written brief on the record.

It was submitted from the side of the workman that the workman was employed with the above said, management of M/s. VSNL since 08-07-1998 as a Lift Operator and his last drawn salary was Rs. 2200 per month, which was more less than minimum wages as per the Labour Laws.

It was further submitted that during the course of the employment of the workman, the management did not provide him all the legal benefits as per provisions of the labour laws of the land as passed from time to time such as appointment letter, annual leaves, casual leaves, ESI, PF, Minimum Wages, Overtime in double etc. for which the workman is entitled to get from the management.

It was submitted from the side of the management that the workman was not employed by the management at any point of time on its roll. The workman was used only for incidental/occasional help by the management firstly in October, 1998 to December, 1998 and secondly on 15-04-1999 to 15-06-1999 and the workman was paid the amount in cash on his hand and he signed the receipts for work done during the aforesaid period. No appointment letter was issued to him any time.

It was further submitted from the side of the management that M/s. OTIS Limited supplier of both the aforesaid passenger lifts was providing maintenance of both the Lifts since beginning and the workman was frequently visiting with M/s. OTIS's Technician. The occasional service/Gate Entry Pass was given to the said OTIS's Technicians for taking items out of the office of the management for attending faults as and when required. It was submitted that M/s. OTIS Limited might, have hired the workman for their own work. The gate passes are being issued to the M/s. OTIS Limited and not to workman in his personal capacity and it is submitted that the workman has mischievously and wrongfully tampered with the gate passes by writing Lift Operator etc. below his name after getting it signed from the management.

The workman has filed B - 21, Gate Pass to show that the workman was permitted to enter the premises of the management from 28-7-1998 to 30-9-1999. He has not filed any Identity Card to indicate that he was directly engaged by the management.

B -22 is the Cash Bill dated 2-11-1998 of Rs. 2100 B-23 the another Cash Bill of Rs. 21 00. B - 24 is another bill of Rs. 2100. These three Cash Bills show that the workman cleaned and operated the Lift in the month of October, November and December, 1998. B-29 is also cash bill of Rs. 2300. The workman has received these cash for the period 15-4-1999 to 14-5-1999. B-31 is the bill for cleaning and operating Lift from 15-5-1999 to 15-6-1999. These 5 cash, bills show that the workman worked for 5 months. 3 months in the year 1998 and 2 months in the year 1999. The workman has not filed any other bill to prove the fact that payment was made to him for any other month.

The workman has filed Gate Passes of 16-1-1999, 20-2-1999, 30-3-1999, 24-4-1999. These Gate Passes are for particular days and they do not prove that the workman worked regularly in the months of issue of the Gate Passes.

It was submitted from the side of the workman that Gate passes and the bills are lying with the management whereas it has been stated by the management that the workman has worked for only the periods utmost of 6 months, 3 months in the year 1998 and 3 months in the year 1999. No other document has been filed either by the workman or by the management.

In the affidavit the workman has stated that he worked regularly from October 1998 to November, 1999 regularly. Mere averments of the affidavit are not sufficient to prove the fact that the workman worked regularly for the period as alleged. He has to prove by cogent documentary evidence the working of 240 days.

It was further submitted by the management that as per allegation of the workman he has been engaged by the Manager, Sh. Raghubir Pd. Singh but he has not been examined by the workman. The workman has admitted in his cross examination that he was not issued any Identity Card. He was issued only Gate Passes. Only one copy of this has been filed.

The workman has alleged that he has worked regularly from July, 1998 to October, 1999, so the burden is on him to prove the allegations of the claim statement. No adverse inference can be drawn in the absence of documentary evidence.

My attention was drawn to 1957 SCR 152 and 1990 LLJ 320. The case law cited by the workman are not applicable in the facts and circumstances of the present case.

It has been held by the Hon'ble Apex Court that the working of 240 days cannot be proved by mere averments of affidavit. It is to be proved by cogent documentary evidence. The workman has not succeeded in proving that he has worked for 240 days, so Section 25 F of the ID Act, 1947 is not attracted. The claimant is not entitled to get any relief as prayed for.

The reference is replied thus :—

The action of the General Manager. Videsh Sanchar Nigam Limited, Greater Kailash, Part I, New Delhi—110048 in verbally stopping from duty w.e.f. 31-10-1999 to Shri Roop Chand, Lift Operator, instead of regularizing his services and not paying him wages as per their regular employee, is justified. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Date : 25-7-2007

R. N. RAI, Presiding Officer

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 125/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-42012/104/2004-आई आर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/2005) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Central Public Works Development and their workmen, received by the Central Government on 30-7-2007.

[No. L-42012/104/2004-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GGVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEWDELHI

Presiding Officer : R. N. Rai.

I.D. No.125/2005

PRESENT :

Sh. B. K. Prasad —1st Party

Ms. Pooja Wahal —2nd Party

In the matter of :—

Shri Ashok Kumar & 2 Others,
All India CPWD Karamchari Union,
Regd. Plot No.1, Udasin Mandir,
Aram Bagh, Paharganj,
New Delhi - 110055.

Versus

The Executive Engineer (Elect.),
Electrical Division VIII,
CPWD, Vidyut Bhawan,
New Delhi.

AWARD

The Ministry of labour by its letter No. L-42012/104/2004- (IR-CM-II) CENTRAL GOVERNMENT DT. 17-11-2005 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the demand of the All India CPWD Karamchari Union, New Delhi that S/Shri Ashok Kumar, Rakesh Kumar and Jaswant who are working as wiremen through contractor in the establishment of CPWD, Electrical Division, VIII, New Delhi should be regularized in the establishment of CPWD w.e.f. 7-10-2002 is legal and justified.? If so, to what relief the workmen are entitled?"

That the workman No. 1 was initially induced on 7.10.2002, workman No. 2 was induced on 7.10.2002 and the workman No. 3 was induced on 7-10-2002 as Wireman through the private contractor, management No. 3 for discharging the job of operating the wireman for the Principal Employer management No. 2, Executive Engineer (Elect. Division - VIII), Vidyut Bhawan, CPWD, New Delhi. It is stated that ever since their appointment they have been discharging their job diligently and sincerely for the management of CPWD having posted at Shastri Bhawan, Sub-Division - III under the Executive Engineer, Electrical Division - VIII No. 2 i.e. management No. 2.

That the nature of job discharged by both the workmen are perennial and permanent in nature and the job satisfy all the ingredients contained in section 10 of the CLRA, Act, 1970 in the said job. It is stated that the contract awarded by CPWD in favour of contractor for carrying out perennial nature of job is bad in law and the contract itself is vague which ought to be lifted in industrial adjudication.

That the workmen are placed under the direct control and supervision of principal employer and the contractor has no role to play in day to day affairs of working of the workmen. It is stated that the nature of job performed by the workmen are similar to the workman posted on regular basis and they work as if under the principal employer.

That each of the workmen has completed 240 days in each year of working, requiring the establishment of principal employer to regularize them in the principal employer.

That last the workers raised their dispute before the ALC which in terms referred to the appropriate Government which in terms referred the same for adjudication to this Hon'ble Court.

That the termination even otherwise in the height of high handedness, malaified, unfair labour practice and victimization and also illegal unjustified.

That the workers are entitled to the regularization/ absorption in the establishment of CPWD since their respective dates of initial appointment through contractor with consequential benefit in the matter of pay/emoluments and other benefits.

The management has filed written statement. In the written statement it has been stated that the authorized representative of the management is posted as executive engineer in the office of the management (No.1), CPWD and as such he is authorized to file the present written statement to the statement of claim filed by the workmen.

That before giving parawise reply to the statement of claim filed by the workmen concerned before the Hon'ble Court, the deponent craves leave of this Hon'ble Court to state few necessary facts for the true appreciation of the controversy.

That the workmen had never been engaged in the CPWD department. It is the contractor who had taken the contract of running operations of sub-station at Shastri Bhawan. In order to carry out his work the contractor engaged the said workmen. Therefore, the workmen were always under the control, administration and supervision of the contractor who had employed him and is responsible for providing him his salary according to his own wish. The workmen had never been under the direct control of the CPWD department.

That it will not be out of place to mention here that there is already regular and sufficient staff with the management of CPWD to carry out their work. However where shortage of staff is felt for carrying out certain important work in order to meet the sporadic need, the department gives the particular work to the contractor only on temporary and need basis. After taking the contract it is the contractor who engage the workmen on his own requirement in order to carry out his work.

That for the engagement of an employee on permanent basis there is definite processes of appointment after due notification of the vacancies, the names of appropriate candidates are called from the employment exchange. The appointing authority who issues appointment letters to the employees concerned appointing them on probation period they are issued confirmation letters confirming them on service. The engagements of the workmen concerned were not through aforesaid process.

That it is pertinent to point out that the workmen had misunderstood that they had ever been the casual/ temporary labour of the department. There is a definite ban imposed by the appropriate Government on engagement of casual labour thus there arise no question of engagement of these casual/temporary workmen by the department.

That as the workmen were engaged by the contractor and were never engaged by the department therefore the demand of the workmen engaged by the contractor for giving them the regular employment in the department is totally baseless and meaningless.

That the workmen concerned were neither appointed on a substantive vacancy on permanent basis nor were their names called for from the employment exchange in as much as they were not issued any appointment letter as their employment were purely of temporary basis for a particular sub-division of CPWD through a contractor.

That the engagement of the workmen concerned with the contractor was purely for a particular contract of running operations of sub station since the work of the workmen was purely of the temporary nature and also the workmen engaged by the contractor and not by the department therefore the engagement of the workmen cannot be termed as casual/temporary labour directly engaged with the department.

That it will not be out of place to mention here that the Ministry of Finance had further imposed a ban vide office memorandum dated 5-08-1999 even for fill up vacant posts thus in view of the aforesaid office memorandum the workmen concerned cannot be regularized in the services.

That the workmen concerned were deputed by the private contractor. The contract with the contractor was only confined to the running operations of sub station at Shastri Bhawan. Moreover the nature of job for the workmen concerned is nor perennial and permanent in nature and does not satisfy all the ingredients of section 10 of CLRA, Act, 1970.

The workmen are not the employees of management of CPWD. The workmen were engaged by the contractor for running operation for a particular sub station of CPWD and the work was only confined to the running operation of sub-station at Shastri Bawan. The department had given the contract of running operation of sub-station at Shastri Bhawan to the contractor which kept on changing from time to time from one contractor to other. Moreover there was no single contract continued from the year 2002, onward, and as such the labour kept by the different contractors for the execution of contract not be treated as the labour kept by the CPWD establishment.

That the workmen were engaged by the contractor for running operation of particular sub-station of CPWD and the work was only confined to the running operation of sub station at Shastri Bhawan. The department had given the contract of running operation of sub-station at Shastri Bhawan to the contractor which kept on changing from time to time from one contractor to other. The department of CPWD has to perform various works on behalf of different departments which are not perennial and permanent in nature. Here also, the workmen concerned are not employees of the department of CPWD but are the employees of the contractor and are kept by the contractor to perform the work for sub-station at Shastri Bhawan and the nature of the job is not perennial and permanent and inasmuch as the contract of the workmen with the contractor is not vague. The workmen were kept by the contractor to perform particular nature of work as required by the contractor and are kept through the contractor.

That it is wrong to allege that the workmen are placed under direct control and supervision of the principal employer and the contractor has no role to play in the day-to-day affairs of the working of the workmen but the work and the appointment of the workmen were under the direct control of the contractor and the department of CPWD has no control on work as a whole done by the contractor. The contract is an independent establishment. They are the only employer of the workmen and also responsible for their works, payment of wages, to decide their service condition etc. The nature of the job performed by the workmen is temporary and on need basis and cannot be held to be similar to the workmen posted on regular basis.

That the assertions made by the workmen that they have completed 240 days is totally baseless, as the workmen are not the direct employees of the management and are not on the rolls of the department. The log book is issued to the contractor and his employees to sign the same on behalf of the contractor is not an attendance register. The attendance register in Government offices is kept in form MHAI and the attendance is marked twice a day by putting the time of arrival and departure.

That the workmen are not the employees of the management of CPWD. The workmen were engaged by the contractor for running operation of particular sub-station of CPWD and the work was only confined to the running operation of sub-station at Shastri Bhawan. The department had given the contract of running operation of sub-station III at Shastri Bhawan to the contractor, which kept on changing from time to time from one contractor to other. Therefore, the question of termination of their services by the department does not arise, as there is no employer-employee relationship does not exist between them.

The workmen-applicants have filed rejoinder. In the rejoinder they have reiterated the averments of their claim statement and have denied most of the paras of the written statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workmen that the workman No. 1 was initially induced on 7-10-2002, workman No. 2 was induced on 7-10-2002 and the workman No. 3 was induced on 7-10-2002 as Wireman through the private contractor, management No. 3 for discharging the job of operating the wireman for the Principal Employer management No. 2, Executive Engineer (Elect Division - VIII), Vidyut Bhawan, CPWD, New Delhi.

That the nature of job discharged by both the workmen are perennial and permanent in nature and the job satisfy all the ingredients contained in section 10 of the CLRA, Act, 1970 in the said job.

It was further submitted that the workmen are placed under the direct control and supervision of Principal Employer and the contractor has no role to play in day-to-day affairs of working of the workmen.

It was submitted from the side of the management that the workmen had never been engaged in the CPWD department. It is the contractor who had taken the contract of running operations of sub-station at Shastri Bhawan. In order to carry out his work the contractor engaged the said workmen.

It was further submitted that there is already regular and sufficient staff with the management of CPWD to carry out their work. However where shortage of staff is felt for carrying out certain important work in order to meet the sporadic need, the department gives the particular work to the contractor only on temporary and need basis.

That the engagement of an employee on permanent basis there is definite processes of appointment after due notification of the vacancies, the names of appropriate candidates are called from the employment exchange.

It was further submitted that the workmen concerned were neither appointed on a substantive vacancy on permanent basis nor were their names called for from the employment exchange.

It transpires from perusal of the order sheet that the workmen have filed their duty chart and it has been initialled by the Jr. Engineer of the department. There is no other document except the duty chart.

It was submitted from the side of the management that the Jr. Engineer of the department has verified the duty chart for the purposes of payment. The workmen have been assigned the duty by the contractor who engaged them. The contractor supervised their work prior to making payment. The chart of duty was verified to ascertain the days for which the contractor's workmen have worked.

These workmen were engaged on 7-10-2002 and they filed a petition in the Hon'ble High Court of Delhi. The stay order was vacated in 2005 and the management terminated the services of the workmen after direction of the High Court to approach the appropriate forum. The workmen have filed certificate regarding their technical qualification.

The workmen have stated in their cross-examination that they got their payment of daily wages from Jr. Engineer. There is no document on the record to establish the fact that the wages have been paid to these workmen by the Jr. Engineer of the department or any official of the management. There is also no proof that duty to the workmen was assigned by any official of the department.

The workmen have no doubt stated in their affidavit and cross-examination that they were working under the direction of the Jr. Engineer of CPWD but no order regarding assignment of duty has been filed on the record. They have admitted that payment to them was made by the contractor.

The case of the workmen is that they worked under the control and supervision of the Jr. Engineer. The Jr. Engineer assigned them duties and watched their activities. The only document filed is the Log Book. It has been initialed by different Jr. Engineers, but the case of the management is that the Log Book was maintained by the contractor and the Jr. Engineer only verified the attendance of the workmen.

It is the case of the workmen that neither the Principal Employer nor the contractor is registered under Contract Labour (Regulation & Abolition) Act, 1970. The contract is sham, camouflage and illegal.

It is admitted to both the parties that contract labour has been abolished by notification dated 31-07-2002. The Ministry of Labour has prohibited the employment of contract labour for office/establishment of CPWD on the work of the Wireman. MW1 has admitted that there is abolition of contract labour and notification has been issued by the Ministry of Labour.

The contract labours have been engaged in breach of the provisions of the Section 7 of Contract Labour (Regulation & Abolition) Act, 1970. No registration certificate for engaging the workmen has been filed by the management. In view of Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970, the establishment should be registered with the registering office. No registration has been obtained for engagement of contract labour. Thus, there is breach of Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. Neither the Principal Employer nor the Contractor is registered under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. There is breach of Section 7 of the Act..

It is settled law that Registration u/s 7 is mandatory for engagement of contractor workers by the Principal Employer as well as by the Contractor. Provisions of Section 12 of Contract Labour (Regulation & Abolition) Act, 1970 is also to be followed. Non-registration either of the Employer or of the Contractor u/s 7 & 12 of Act, 1970 attracts punitive provision of Section 23 of the Contract Labour (Regulation & Abolition) Act, 1970.

It has been held in Deena Nath Vs. National Fertilizers Limited; 1992 LLR 46 (SC) that consequences of noncompliance with the provisions of Section 7 or Section 12 is penal.

It has been further held in National Projects Constructions Corporation Limited Vs. Labour Enforcement Officer, (1991) 62 FLR 497 (Cal) that this Act does not exclude prosecution against the State or the Government or any of its instrumentalities.

The management has acted in breach of Section 7 and 12, it cannot be itself a ground for regularization.

It is vivid from the above that the workmen have not proved that they worked under the control and supervision of the management and payment to them has been made by the management. So far as breach of Section 7 & 12 is concerned they may launch prosecution but the breach does not entitle them to regularization.

It has been held in 2004 LLR Page 351, as under :

> "The modern approach has been to abandon the search for a single test, and instead to take a multiple or pragmatic approach, weighing upon all the factors for and against a contract of employment and determining on which side the scales eventually settle. Factors which are usually of importance are as follows the power to select and dismiss the direct payment of some form or remuneration, deduction of PAY and national insurance contributions, the organization of the workplace, the supply of tools and materials (though there can still be labour only sub-contract) and the economic realities (in particular who bears the risk of loss and has the chance of profit and whether the employee could be said to be 'in business on his own account'). A further development in the recent case law (particularly concerning a typical employments) has been the idea of "mutuality of obligations" as a possible factor, i.e. whether the course of dealings between the parties demonstrates sufficient such mutuality for there to be an overall employment relationship."

It is evident from the judgment that the workmen should be directly appointed by the management. In this case it is admitted that the workmen were selected through contractors.

It has been further held in AIR 1957 SC 264 as under :—

> "The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks and Harbour Board Vs. Coggins & Griffith (Liverpool) Limited (1947) 1 A.C. 1 at P.23.1, "The proper test is whether or not the hirer had

authority to control the manner of execution of the act in question."

It is evident from this judgment that the workmen have to prove that the management directed them to discharge the duties. In the instant case no evidence has been filed to this effect that the workmen worked under the control and supervision of the management.

Even in Constitution Bench Judgment of (2001) 7 SCC 1, Steel Authority of India and others has been held as under :—

> "Engagement of contract labour in connection with the work entrusted to him by the principal employer, held, does not culminate in emergence of master and servant relationship between the principal employer and the contract labour–Circumstance under which contract labour can be treated as workman of principal employer explained Contract Labour (Regulation & Abolition) Act, 1970.
>
> Where a workman is hired through a contractor, held, master and servant relationship exists - But where a workman is hired or in connection with the work of a establishment to produce a given result or the contractor supplies workmen for any work of the establishment, unless the contractor is a mere camouflage, the workman cannot be treated as an employee of the principal employer."

In the instant case the workmen have not proved that they worked under the control and supervision of the management. They have also failed to prove that they received the payment from the management. No documents have been filed to establish the fact that the management directed the workmen to discharge their duties. The workmen have been engaged by the contractor. They worked under the directions of the contractors, so the relationship of employer-employee is not proved. In the instant case the workmen are not entitled to reinstatement or regularization.

The reference is replied thus :—

The demand of the All India CPWD Karamchari Union, New Delhi that S/Shri Ashok Kumar, Rakesh Kumar and Jaswant who are working as wiremen through contractor in the establishment of CPWD, Electrical Division, VIII, New Delhi should be regularized in the establishment of CPWD w.e.f. 7-10-2002 is neither legal nor justified. The workmen applicants are not entitled to get any relief as prayed for.

The award is given accordingly.

Date : 20-7-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्केलोजिकल सर्वे आफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या. 141/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-42012/187/2001-आई आर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/2002) of the Central Government Industrial Tribunal-Cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Archaeological Survey of India, and their workmen, received by the Central Government on 30-7-2007.

[No. L-42012/187/2001-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

SHRIKANT SHUKLA, Presiding officer

I.D. No.141/2002

Ref. No. L-42012/187/2001-IR(CM-II) dt. 9-8-02

Between

The Chief Secretary
All India Archaeological Survey
Mazdoor Union, 80, Lorries Complex
Namner,
Agra (U.P.)

And

1. The Director
Archaeological Survey of India
Janpath
New Delhi-110011

2. The Dy. Superintending Horticulturist,
Archaeological Survey of India
Park Division No. 1, Tajmahal
Agra (U.P.) 282001

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following Schedule *vide* No. L-42012/187/2001 (IR (CM-II) Dt. 9-8-2002 for adjudication to the Presiding Officer CGIT-Cum-Labour Court, Lucknow ;

"क्या उप अधीक्षक, उद्यानविद, भारतीय पुरातत्व सर्वेक्षण उद्यान शाखा प्रथम, आगरा द्वारा श्री शत्रुघन, पुत्र श्री दासु तथा 11 अन्य (सूची संलग्न) को दि. 28-7-2000 से सेवा से निष्कासित करना तथा उन्हें सेवा में नियमित न किया जाना न्यायोचित है ? यदि नहीं तो सम्बन्धित कर्मकार किस अनुतोष के हकदार हैं ?"

The representative of the trade union has filed the statement of claim alleging that workers Shatrughan S/o Dasu Uddal, Shatrughan S/o Ramnath, Guddu, Dinesh, Ram Kumar, Chandrika, Babulal, Kunnu, Rajendra, Hussani and Sri Jalludin were daily wage labourer who have been terminated from the service without giving any notice, notice pay in lieu of notice and compensation and thus the management of the opposite party has violated the provisions of Section 25F of the I.D. Act (C) 1947. It is also alleged that the management of the opposite party has violated the provisions of Section 25G & H as well. Accordingly trade union office bearer has requested that they reinstated with continuity of service and back wages.

Opposite party has filed written statement alleging therein that the workers cited in statement of claim are not the industrial labour and the reference order suffers from misjoinder of necessary order suffers from misjoinder and nonjoinder of necessary parties. The opposite party has denied that the workers shown in the statement of claim were the employees of the opposite party. It is further submitted that workers Shatrughan and 11 others have no lien and right of any permanent or regular post of Archaeological Survey of India, Horticulture Sub Divn, Lucknow. The management has never issued any appointment letter/orders to the said workers. It is further stated that Shatrughan and 11 others have never worked for 240 days during any calender year or preceding 12 months in Archaeological Survey of India, Horticulture Sub Division, Lucknow.

The trade union has examined Sri Shatrughan.

Opposite party has examined Sri SM Ali, AS-I of the opposite party.

During the course of proceeding a application paper No. D-24 was moved on behalf of the trade union that date of termination mentioned by the Government in the reference order is 28-7-2000 whereas the actual date of terminatlon of worker are 12-7-02. The representative therefore requested that the adjournment for getting the reference order amended. The application dtd. 8-11-04 was allowed thereafter several dates were given for getting the reference order amended.

Lastly on 18-07-07 the trade union office bearer came forward with the statement that the workers were not terminated on 28-07-2000 instead they were terminated on 30-06-02 office bearer of the trade union also stated that he made request to the appropriate Government to amend the reference order but the Government has declined the request and advised the trade union to raise fresh issue at the conciliation proceeding. The representative of the opposite party has also stated that workers were not terminated on 28-07-2000 and no other arguments were forwarded.

This court was ordered to adjudicate as to whether the action of the employer in terminating the services w.e.f. 28-07-2000 of the worker Shatrughan and 11 others and non regularisation thereof was justified? The court was further to give its findings that if termination of non regularisation was not justified then, if the workers are entitled to any relief.

Since according to the trade union itself the workers were not terminated on 28-7-2000 instead they were terminated on 30-6-2002, in the circumstances the legality or illegality in terminating the worker or non regularising them can not be adjudicated and accordingly workers are not entitled to any relief. Award passed accordingly.

Lucknow

Date: 23-7-2007.

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैन्ट बोर्ड, आगरा कैन्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ नई दिल्ली के पंचाट (संदर्भ संख्या 19/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-13012/1/2005-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2005 Central Government Industrial Tribunal-Cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Cantt. Board, Agra Cantt. and their workman, which was sreceived by the Central Government on 30-7-2007.

[No. L-13012/1/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Presiding Officer: Shrikant Shukla

I.D. No. 19/2005

Ref: Order No. L-13012/1/2005-IR(DU)

Dated : 13th June, 2005.

BETWEEN

Shri Sahib Singh, S/o. Shri Daya Ram,
C/o. Shri Subhash Chandra, H. No. 11-D/90,
Near Kaila Devi Temple, Naraich, Distt. Agra

AND

Executive Officer, Cantt, Board,
114, Fatehpur Sikri Road, Agra.

AWARD

The Government of India, Ministry of Labour, vide its order No. L-13012/1/2005-IR(DU) Dated 13th June, 2005. Referred following Schedule for adjudication to Presiding officer, Central Govt. Industrial-Cum-Labour Court, Lucknow.

SCHEDULE

"Whether the action of the Executive Officer, Cantt. Board, Agra Cantt. in terminating the services of Shri Sahab Singh S/o. Shri Daya Ram w.e.f. 01-03-2003 is justified and legal?, if not, what relief the concerned workman is entitled to?."

Worker's case is that he alongwith others applied for the post of Mali in accordance with Notification/ Advertisement published in local news paper Amar Ujala bearing Advertisement No. 6/EST/C/2001 dated 21-7-2001. Accordingly he was called for competetive interview. He has stated that his Roll No. 17 and the authorities of Cantt. Board Lucknow on 4-10-2001. It is further submitted that in all five (5) Labours were appointed and out of 5 four were regularly appointed on 01-2-2002 in the scale of 2550-3200. It is further alleged that the and Sri Narendra Singh son of Sri Digambar Singh appointed temporary basis. However, the worker was not informed although he was told that he was appointed on the post of Mali. Thereafter he demanded for appointment letter and he was asked to join the duty w.e.f. 27-02-2002 without oppointment letter. It is also alleged that co-worker Sri Narendra Singh Son of Sri Digambar Singh, who was appointed as worker was made permanent on 23-7-2002 leaving aside the worker. Worker has further alleged that he worked under opposite party from Feb., 2002 to Sep., 2002 on the scale of 2550-3200 alongwith other consequential benefits, which are available to permanent worker of the Govt. of India. All of a sudden in Oct., 2002 the employer without assigning any reason reduced the salary substantially. The worker complainted against the said action and on which he was assured that he shall get it regular salary. When the assurance did not succeed, the worker made complaint to Chairman, Cantt. Board Shri Sheonon Singh, who in turn directed the Executive Officer for payment of salary and other benefits at per with co-worker Sri Narendra Kumar. He also directed that the worker be made permanent. However the Executive Officer did not act accordingly. The Opposite Party was annoyed and with due to prejudice, he made deductions from the pay and terminated the services of the worker w.e.f. 01-03-2003. Worker repeatedly requested the Opposite Party for reinstatement and returning the money deducted from the salary. When Opposite Party failed to take appropriate action, the worker got the legal notice sent through his advocate. Worker has alleged that he is unemployed since termination and facing hardship. Worker has accordingly requested that he be reinstated and Opposite Party asked to pay back wages. It is also submitted that he, be made permanent and the management of the Opposite Party be directed to pay the amount illegally deducted from his salary.

Worker has filed photostate copies of following documents alongwith statement of claim :—

1. Advertisement Publication in Amar Ujala Ext PW-1

2. Call for interview letter dated 17-9-2001 with reference to the post of MALI, Ext. W-2.

The Executive Officer of Cantonment Board, Agra has filed the written statement and admitted the publication of advertisement and has further submitted that after interview Sarva Shri Mukesh Kumar, Jitendra Singh, Dharmendra Kumar and Shri Shiv Gopal were employed and Shri Narendra Singh and Shri Sahab Singh were engaged for 85 days and thereafter the term completed on 26-04-2002. Thereafter Shri Sahab Singh was again appointed for 89 days w.e.f. 28-4-2002. It is further submitted that the worker was again appointed for 75 days w.e.f. 27-7-2002. The same ended on 9-10-2002. Thereafter the worker was engaged as daily wages for sixty days mustroll employee. The daily wages rate was Rs. 87.80 per day. Referring to the appointment of co-worker Shri Narendra Singh it is submitted that since he joined services on 01-02-2002, therefore, on the retirement of Shri Shyam Lal, Head Mali, he was made permanent. It is submitted that Shri Sahab Singh was not appointed against any sanctioned post, and he has joined on 27-02-2002, therefore, he could not be appointed as regular Mali. The Opposite Party has denied receiving any complaint from the worker. However, the receipt of notice of Shri Surendra Singh, was aaccepted. Opposite Party has submitted that since the appointment was for a limited period and since it was not renewed further, therefore, it could not be said that the services were terminated violating the rules, therefore such term notice is not covered under the definition of retrenchment. It is also submitted that no post of Mali is vacant in category of O.B.C.

The worker has filed rejoinder in which he has stated that the opposite party has concocted an imaginary story. It is submitted that there was no mention of the fact that a candidate could be appointed for a limited period. Worker alongwith others appointed with due interview and his name was at Serial No. 17. Worker has allaged that the Opposite Party had filed a written statement during concilation proceeding before ALC (C), Kanpur, where such facts were not submitted as has been now said, now Worker has specifically denied that he had been appointed for fix period. The worker has alleged that the employer had adopted the policy of pick and choose. Worker had alleged that he had worked continuously more than 240 days in a year and his services can not been terminated with and following provisions of Sections 25 G and F of I. D. Act, 1947. It is further submitted that new hand has been engaged after his termination.

Worker has submitted photostate copy of some more documents, which are as follows :—

(i) Call letter for interview issued by opposite party dated 17-9-2001.

(ii) Notification of Cantonment Board bearing No. 6/ EST/CB/2001 published in local news paper Amar Ujala on 31-7-2001.

(iii) Written Statement of opposite party/filed before Concilation Officer.

(iv) Notice of Surendra Singh on behalf of workman dated 21-6-2003.

(v) Receipt of Post Office posting the above notice.

(vi) Letter of opposite party sent to R.L.C. (e), Kanpur, about the Workman.

Worker moved the application for summuning the documents.

(i) The resolution of Cantonment Board on the basis of which employment notice was got published.

(ii) Standing orders or service rules, on which there is provision of appointment of workers.

(iii) The proceedings of interview and certified copy of selected list.

(iv) Resolution of Cantonment Board on which Shri Narendra Singh made permanent.

(v) Salary register.

(vi) Resolution of Board regarding the appointment of the worker.

(vii) Attendance Register and Musterolls.

(viii) Resolution of Board regarding the termination of worker.

The opposite party objected the application referring to the interview selection record, it was made clear that departmental file when produced shall clear the ambiguity. The employer was asked to file the service rules. It was argued on behalf of opposite party that there was no resolution of the board for making Narendra Singh as permanent. Opposite party was also directed to file musterolls alongwith certified copy. As representative of opposite party has stated that no new hand is engaged after the termination of worker, hence musterolls from March 2003-2004 was not called for.

Opposite Party had stated that since the opposite appointing authority of Class—IVth employee is Chief Executive Officer, therefore resolution of board not required.

In the circumstances opposite party was not directed to file copy of resolution :—

The representative of worker had file following documents :—

(i) Photostat copy of award passed in I.D. Case No. 271/89.

(ii) Order passed in L.C.A. Case No. 52/83.

(iii) Photostat copy of Award passed in I.D. Case No. 417/85.

(iv) Photostat copy of Award passed in I.D. Case No. 218/83.

(v) Photostat copy of order of Hon'ble High Court, Allahabad dated 30-7-1996.

(vi) Photocopy of letter of Opposite Party dtd. 27-9-85.

(vii) Photostat copy of proceeding before Asstt. Labour Commissioner (Central), Lucknow dated 17-5-1961.

(viii) Photostat copy of Officer Order of opposite party bearing No. 340 dated 17-6-96.

(ix) Photostat copy of employer dated 16-8-96.

(x) Photostat copy of office order of employer bearing No. 352 dated 7-3-96.

(xi) Photostat copy of Union's letter dated 27-5-96.

(xii) Photostat copy of City Magistrate dated 23-7-96.

(xiii) Photostat copy of employer dated 8-7-96.

(xiv) Photostat copy of Union letter dated 8-5-96.

(xv) Photostat copy of news paper published in local news paper Dainik Jagran, Agra on 31-7-96.

Opposite party has filed following documents :—

(i) Photostat copy of office order book of Cantonment Board.

(ii) Photostat copy of contingent bills.

(iii) Photostat copy of salary register.

(iv) Photostat copy of Attendance register.

(v) Photostat copy of Appointment letter of Shri Narendra Singh dtd. 15-7-2002.

(vi) Photostat copy of letter of Executive Office regarding joining of the Narendra Singh addressed to Sanitary Inspector.

(vii) Photostat copy of list of condidate for the post of Mali in which the name of Sahab Singh is in serial No. 17 and the name of Narendra Singh is in Serial No. 85.

(viii) Photostat copy of Cantonment and Servant Rules, 1937.

The worker has examined himself and opposite party has examined Dr. Ashok Sharma.

Parties has filed written arguments. Also heard representative of the parties.

This is admitted fact that opposite party adopted prescribed procedure for a appointment of the post of Mali. Accordingly four (4) candidates were appointed, as Shiv Gopal, Dharmesh Kumar, Jitendra Singh Rana and Mukesh Kumar were appointed on the post of Mali. Besides, those four candidates, two other candidate Sri Narendra Singh and Shri Sahab Singh were engage on 01-2-2002 and 27-2-2002 on daily wages and Sahab Singh worked till Jan. 2003 on musterolls.

Dr. Ashok Sharma had stated that besides four persons, earlier Narendra Singh was also appointed after the retirement of Shri Bhoop Singh

Dr. Ahok Sharma has stated that Sahab Singh comes under the category of O. B. C. and O.B.C. post is not vacant.

Dr. Ashok Sharma in cross examination has stated that Sahab Singh was engaged on his interview only.

Dr. Sharma had admitted that no appointment letter was issued to Sahab Singh. Dr. Sharma had stated that the basic pay was Rs. 2550. He also stated that the same basic pay was offered to regular employee.

Dr. Sharma has also admitted that the reply was filed before Asstt. Labour Commissioner, Kanpur on 8-10-2003 and the salary was reduce on 11-10-2002. It is also admitted fact that to other condidates (one Sri Sahab Singh and another Sri Narendra Singh) were not appointed as Mali. However, they were appointed temporarily.

Representative of worker stated that when worker filed a dispute before Asstt. Labour Commissioner, Kanpur, therefore in view to victimise the worker, he was removed from regular pay scale to consolidated salary. However, the worker continued working on consolidated wages, but he was removed without complying the provision of Section 25F of Industrial Dispute Act.

During the course of argument it is admitted that presently the posts are vacant and for which selection is in progresss. It is also admitted fact that worker has applied.

Dr. Ashok Sharma has stated in his examination-in-chief, wherein he has stated that four posts of Mali were vacant and its advertisement was given in the news paper named Amar Ujala on 31-7-2001. He also stated that others alongwith Sahab Singh applied for the posts He has also stated that Sahab Singh and others called for interview. According to him instead of payment on scale of pay, he was made payment in the minimum of pay used & laws on daily wages.

Dr. Sharma had stated that the records details of marks secure by the candidate is not available, therefore, could not be filed.

Dr. Sharma has also admitted that no notice of termination has given to Sahab Singh.

It has been admitted by the management that the concern workman had been paid basic and not other allowances like HRC, CCA. etc. as to regular employee.

The opposite party had pleaded that Sri Sahab Singh was engaged for 85 days and his terms ended on 27-4-2002 and then worker was appointed on 28-4-2002 for 87 days and his services came to an end on 25-7-2002, thereafter he was engaged for 75 days w.e.f. 27-7-2002 and the period of employment ended on 9-10-2002. Thereafter he was appointed for 60 days on daily wages with rate Rs. 87.80 per day. But unfortunately his witness Mr. Sharma has not come forward to corroborate the said facts.

The fix term appointment could be approved by giving an appointment letter to that effect to worker Sahab Singh, so that he could knew that his appointment was for a fix period. Admittedly no appointment letter was issued.

Worker Sahab Singh has been examined by his representative Sahab Singh also been cross examined by the opposite party, but there is no cross examination and he was appointed on fixed terms for a limited period.

Opposite party has filed extract of register purported to be that of office order book of Cantonment Board that too not in original, the said document has not been referred by the witness of opposite party. The same has also not been proved that such orders have been passed on relevant dates.

The first such document is paper No. 24/3 showing date as if it was passed on 11-3-2002 indicating that Shri Narendra Singh and Shri Sahab Singh were appointed w.e.f. 01-02-2002 for 85 days. In case they were appoinet on 01-02-2002. Now the order was passed on 11-02-2002 is not clear. In the next second entry on 20-3-2002. There is no serial number of order. In the circumstances the genuineness of documents is doubtful. The opposite party ought to have produced the original office order book and should have explained such type of contradictions. It is relevant to mention here that the order numbers mentioned on the order dated 14-1-2002 is 171 whereas the serial number of order No. 213 is dated 11-3-2002 and no Order No. appears for order dated 20-3-2002.

On the discusion above, I came to conclusion that the opposite party has not been able to prove that the appointment has not for a fix time.

It is also proved that the worker Sri Sahab Singh was appointed as temporarily Mali on 27-2-2002 and subsequently he worked on daily wages till he was terminated from service w.e.f. 01-03-2003. It is admitted fact that he was not given any notice, pay in lieu of notice, and compensaion, as provided Under Section 25F of Industrial Dispute Act, 1947.

Worker had satisfactorily explained that his case is not covered by any of excepted or excluded category and he has rendered continous service proceeding the date of his term notice. Therefore, termination of service would constitute retrenchment.

As pre-condition for a valid retrenchment has not been satisfied that the termination of service is ab-in-tio, void, invalid and in-operative, where termination is illegal, specially, where there is an in-effective order or retrenchement, there is neither termination or discontinuation of service, and a declaration follows that the workman concern continued to be in service with all back wages and all consequences benefits.

It is settled law that entitlement of workmen to get reinstatements does not necessarily result in payment of back wages, which is independent of re-instatement, while declaring with prayer for wages, factual scenario and the principle of justice, equity and good conscined have to be kept in view. Worker was at a time receiving scale wages plus D. A. subsequently his salary was reduced by the employer and in the circumstances he was already deprived of the sum he was getting when started working with the opposite party. In these hard days, when the prices of essential goods are high, it is really difficult for any one to maintain him, he is unemployed. In the circumstances it would proper to award him 50% back wages.

I, therefore, conclude that the action of the executive officer, Cantonment Board, Agra Cantt. Agra in terminating the service of Sahab Singh S/o Sri Daya Ram w.e.f. 01-03-2003 is unjustified and illegal. It is therefore order to reinstated with continuity of service with 50% of back wages.

Accordingly the Award is passed.

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल हॉर्टिकल्चर बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-II, नई दिल्ली के पंचाट (संदर्भ संख्या 67/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-42012/15/2006-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of (Ref. No. 67/2006) Central Government Industrial Tribunal-Cum-Labour Court, No. II New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the the management of National Horticulture Board and their workmen, which was received by the Central Government on 30-7-2007.

[No. L-42012/15/2006-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Presiding Officer: R. N. Rai. I. D. No. 67/2006

Present: None —1st Party
Sh. Sanjeev Singh—2nd Party

In the matter of :—

Smt. Roshni Devi,
W/o. Shri Sudesh Kumar,
Vill: Razaka,
Tehsil & Distt: Riwari,
Haryana

Versus

The Director,
National Horticulture Board,
Sector-18,
Plot No. 85,
Gurgaon (Haryana)

AWARD

The Ministry of Labour by its letter No. L-42012/15/2006 IR/(DU) Central Government Dt. 25-07-2006 has referred the following point for adjudication.

The point runs as hereunder :

"Whether the action of the management of National Horticulture Board in terminating the services of their workperson Smt. Roshni Devi, W/o Shri Sudesh Kumar, Receptionist w.e.f. 01-06-2004 is just and legal ? If not, to what releif the workperson is entitled to."

The workman applicant has filed claim statement. In the claim statement it has been stated that the petitioner/workman who has been illegally terminated by the respondent has raised an Industrial Dispute alleging unfair labour practice on the respondent.

That the workman was appointed as Receptionist by the respondent vide order dated 01-01-2003. It was accordingly stated that the workman would be paid salary as contingent worker as per the norms of the Board. A copy of the appointment letter is marked as Annexure—I.

That the workman started discharging her duties with utmost care and sincerity and completed a period of more than 240 days in the employment of the respondent.

That the duty of the workman was perennial in nature and requires a permanent employee, therefore, it was time and again assured to the workman that she would be regularized on the aforesaid post of Receptionist in due course.

That though there was a permanent requirement of Receptionist in the office of respondent No. 2, yet with a motive to benefit another person, the respondent abruptly terminated the services of the workman on 01-06-2004.

That since the aforesaid termination of service was the violation of the principles of Industrial jurisprudence as no notice or information of any nature was ever provided to the workman before taking of such steps, the workman accordingly raised an Industrial Dispute and raised her demands, alleging the unfair labour practice upon the respondent and accordingly demanded reinstatement with back wages.

That the respondent filed their reply dated 05-09-2005 disputing the claim of the workman on the ground that the activities of the management do not fall within the ambit of industry as defined under Industrial Disputes Act, 1947. The management further stated that it is not indulged in any production/commercial/economic venture. The copy of the application is marked as Annexure-II.

That the management also stated that it was the workman who left the job on her own and for which the management could not be blamed in any manner whatsoever. The copy of the reply is marked as Annexure—II.

That the Labour Commissioner accordingly prepared a failure report stating that the workman was ready for arbitration and for voluntary adjudication but the management was not prepared for the same. The copy of the report of the Labour Commissioner is marked as Annexure—III.

That in the light of aforesaid circumstances, it is not denied that the work is not of a permanent nature. It is also

not denied that the workman has not worked there for a substantial period of time.

That the only defence taken by the respondent is that it was the workman who left the job on his own and for which the respondent/management could not be blamed.

That the workman accordingly sent various reminders and representations. At last, she also approached the Minister, Human Resources, who in turn wrote to the Minister concerned. The Minister concerned rejected the representation of the workman vide order dated 19-01-2006. Annexure-VI.

That the post on which the workman was discharging her services was perennial and permanent in nature and since the petitioner had been discharging her services since long therefore, she requires to be regularized on the same post.

That the workman was discharging her services with diligence, care and sincerity and there was no reason for removing her from the said post.

That the workman had completed a period of one and half year in the service of the respondents and the respondents ignoring the statutory provisions of the law terminated her services without giving any notice and without assigning any reason.

That the respondent has never denied that the post is not of a permanent nature. The only defence taken by the respondent is that it was the workman who abandoned the job.

The the conduct of the respondent in not regularizing the services of the workman is violative of her fundamental rights as enshrined under Article 14 and 21 of the Constitution of India.

That the conduct of the respondent in not regularizing the working is otherwise illegal, arbitrary, un-constitutional and bad in law.

In the facts and circumstances of the case and in the interest of justice this Hon'ble Court may graciously be pleased to:

(i) direct the respondent to regularize the services of the workman on the post of receptionist or any other post and pay all other conseqential benefits and back wages, National Horticulture Board, and further direct the respondents to pay and provide all consequential benefits; and

(ii). may pass such other and further order(s) which this Hon'ble Court deem fit and proper in the interest of justice.

The management has filed written statement. In the written statement it has been stated that contract of engagement is the corner stone of the edifice of the alleged "Dispute". Petitioner has worked on a contractual engagement as a telephone operator with respondent for a short period from 01-01-2003 to 09-06-2004. The Hon'ble Supreme Court of India in a recent judgment has decided the status and rights of a contractual/temporarily employees. The Constitution Bench of the Hon'ble Supreme Court of India in Civil Appeal Nos. 3595-3612 of 1999, 1861-2063 & 3849/2001, 3520-3524/2002 & 1968 of 2006 (Arising out of SLP (C) 9103-9105 of 2001) titled "Secretary, State of Karnataka and Ors; *Vs.* Uma Devi and Ors." decided on 10-04-2006 has held that:

"....If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wager worker is continued for a time beyond term of his appointment, he would not be entitled to be asbsorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of the appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service....."

The Hon'ble Supreme Court further held in the said case that :

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being

made permanent in the post."

Smt. Roshni Devi filed an OA No. 1197/2006 in the CAT, Principal Bench, New Delhi for regularization of her services on the post of Receptionist. It was decided that "no ground has been made out for interference. The OA is accordingly dismissed at the admission stage itself. No order to costs." The order was passed on 01-06-2006, a copy of which is enclosed. The petitioner, Smt. Roshni Devi has concealed this fact of dismissal of her petition by CAT, New Delhi from this Hon'ble Tribunal.

That the respondent NHB installed the EPABX system and as such the contractual services of Smt. Roshni Devi were no longer required and she was disengaged on 09-06-2004. She was paid wages for the period she worked with the Board w.e.f. 01-01-2003 to 09-06-2004. However, the petitioner was even thereafter offered employment by the Contractor M/s. R. J. Suraksha to whom the respondent had given a contract for certain works in its head quarters at Gurgaon. The petitioner Roshni Devi voluntarily accepted without protest to work in the employment of, M/s. R. J. Suraksha and worked accordingly w.e.f. 01-07-2004 to 19-09-2004 and then left. The contractor had also drawn the payment in respect of contractual term of Smt. Roshni Devi for the period from 01-07-2004 to 19-09-2004 as per records. In case the applicant has any grudge or grouse, it could be against M/s. R.J. Suraksha, the contractor, in whose employment she had agreed to work without any protest.

That the respondent National Horticulture Board is an autonomous body under the administrative control of Ministry of Agricultural established for the integrated development of horticulture. Its function is largely advisory in nature for the development of horticulture. It has been established to promote and propagate horticulture with a view to provide facilities/consultations to the intending horticulturists and is not involved in any kind of production or sale. Accordingly in view of the "predominant nature test" propounded by the Hon'ble Supreme Court it is a non-profit making entity and is not engaged in any activity called business, trade or manufacture nor is an undertaking analogous to business or trade and therefore in view of the definition of "industry" as given in Section 2 (j) of the 10 Act, 1947, National Horticulture Board (Respondent) cannot by any stretch of interpretation be brought within the purview of definition of "Industry" and hence the instant dispute not being an "Industrial Dispute" is not maintainable and is liable to be dismissed in-limine. The provisions of ID Act, 1947 are not applicable upon National Horticulture Board, hence the petition/claim is not maintainable and thus liable to be rejected.

That it is humbly submitted that in the case of S. M. Nilajkar Vs. Telecom, District Manager, Karnataka, 2003(4) SCC 27: 2003(3) JT 436: 2003(3) Scale 533: 2003 (30) Supreme 53 : 2003(2) LLJ 359, the Hon'ble Apex Court observed that "it is common knowledge that the government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer - State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes.

That the petitioner has no cause of action against the respondent and the petition is liable to be dismissed.

That without admitting the applicability of the ID Act, 1947, it is submitted here that the applicant Roshni Devi had worked with the answering management for less than 240 days in the previous calendar year. Hence, otherwise also the petitioner is not entitled for any relief whatsoever.

That the applicant has not come with clean hands before this Hon'ble Tribunal and only wants to extract money from the answering management.

It is stated that the nature of engagement of the petitioner was purely contractual. It is stated that para 3 of the petition is correct to this extent that the applicant was engaged on 01-01-2003 but never as Receptionist in fact, she was engaged on daily rates basis.

It is wrong and denied that the petitioner completed a period of more than 240 days in the employment of the respondents. It is reiterated that the petitioner was never an employee of the respondent rather had worked on contractual engagement that also for a period of less than 240 days in calendar year.

It is wrong and denied that the duty of the petitioner was perennial in nature and requires a permanent employee. It is wrong and denied that time and again petitioner was assured that she would be regularized on the aforesaid post of Receptionist in due course. It is reiterated that contractual engagement of the petitioner was not as a receptionist but was only as a telephone operator.

It is wrong and denied that there was a permanent requirement of receptionist in the office of respondents, yet with the motive to benefit another person, the respondents have abruptly terminated the services of the petitioner.

It is wrong and denied that termination of contractual employment of the petitioner was in violation of the principles of industrial jurisprudence. It is also wrong and denied that the respondents had committed unfair labour practice. It is reiterated that the petitioner was on contractual engagement and no Industrial Dispute has arisen and the petition is misconceived.

It is correct that the petitioner who was further given an opportunity to work as a contractual employee of contractor M/s. R.J. Suraksha, where she worked till 19-09-2004 and thereafter left on her own.

It is wrong and denied that the work of the petitioner was of a permanent nature. It is also wrong and denied that it has not been denied that the petitioner has not worked for a substantial period of time. It is stated that the period of contractual employment herein stated above in the preceding paras is the correct tenure of the contractual engagement of the petitioner.

It is wrong and denied that the only defence taken by the respondent is that it was the petitioner who left the job on her own and for which the respondent could not be blamed. It is stated that the case of the petitioner was of contractual engagement and the petitioner is not entitled for any relief. Even otherwise also the respondent National Horticulture Board is outside the ambit of definition of industry and provisions of ID Act are not applicable.

It is wrong and denied that the post on which the workman was discharging here services was perennial and permanent in nature and since the petitioner had been discharging her services since long therefore, she requires to be regularized on the same post.

It is wrong and denied that the petitioner was discharging her services with diligence, care and sincerity and there was no reason for removing her from the said post. It is reiterated that the petitioner in the capacity of contractual engagement was working as a telephone operator and after the installation of EPABX system her engagement was not required.

It is wrong and denied that the workman had completed a period of one and half year in the service of the respondents and the respondents ignoring the statutory provisions of the law terminated her services without giving any notice and without assigning any reason. It is reiterated that the petitioner was working in the capacity of contractual employee.

It is wrong and denied that the respondent has never denied that the post is not of a permanent nature. It is also wrong that the only defence taken by the respondent is that it was the workman who abandoned the job. It is reiterated that the case of the petitioner was of contractual engagement and on the introduction and installation of EPABX system by the answering respondent, her services were no longer required.

It is wrong and denied that the conduct of the respondent in not regularizing the services of the workman is violative of her fundamental rights as enshrined under Article 14 and 21 of the Constitution of India.

It is wrong and denied that the conduct of the respondent in not regularizing the workman is otherwise illegal, arbitrary, unconstitutional and bad in law.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to :

(i) dismiss the petition/claim with heavy costs; AND

(ii) pass any other or further orders deemed fit and proper in the present facts and circumstances of the case and in the interest of justice.

It transpires from perusal of the order sheet that the case was posted for rejoinder and affidavit on 02-01-2007. The workman was not present on 02-01-2007, 02-02-2007, 02-04-2007, 07-05-2007 and 06-06-2007. Last opportunity was given on 06-06-2007. None was present on 09-07-2007. The opportunity of filing rejoinder and affidavit was closed and the case was reserved for award.

The case of the workman applicant is that he was appointed as Receptionist by the respondent vide order dated 01-01-2003 and he worked for more than 240 days. Her duty was perennial in nature. She was a permanent employee.

The case of the management is that the activities of the management do not fall within the ambit of Industry definition under ID Act, 1947. The workman himself left the job. The work of Receptionist is not a permanent nature of work.

The workman has not filed any evidence in support of his case.

From perusal of the record it also transpires that Smt. Roshni Devi, the workman has approached the CAT, Principal Bench and it was held therein that "appointment is not in terms of relevant rules in view of Uma Devi's case, 2006 (4). She cannot be made regular or permanent. The workman has worked for 1½ years. Even if the claim of the workman is believed, he is not entitled to reinstatement or regularization. There is no documentary evidence or oral evidence in support of her case.

The reference is replied thus :

The action of the management of National Horticulture Board in terminating the services of their workperson Smt. Roshni Devi, W/o. Shri Sudesh Kumar, Receptionist w.e.f. 01-06-2004 is just and legal. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Date: 19-07-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 19/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/295/1998-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/295/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 19/2004

[Principal Labour Court CGID No. 37/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Rajeshwaran : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Zonal Office, Coimbatore : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. S. Sunder Advocates

AWARD

1. The Central Government Ministry of Labour *vide* Order No. L-12012/295/98-IR (B-I) dated 02-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 37/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 19/2004.

2. The Schedule mentioned in that order is as follows :—

> "Whether the demand of the workman Shri K. Rajeshwaran wait list No. 506 for restoring the wait list of temporary messenger in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows : —

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Udagamandalam branch. During 1985-86, the Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Udagamandalam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working as such, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in

service during the same period. While the Petitioner was working at Udagamandalam branch, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-1988, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 506 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed, temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 506, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from

questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are: —

(i) "Whether the demand of the Petitioner in Wait List No. 506 for restoring the wait list of temporary messengers. In the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case,

the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA *Vs.* S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concemed with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1, and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation

of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in " accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. Ml to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross- examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute,

standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS *Vs.* MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the. rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the

federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. .Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. *Vs.* SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said*

panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that *"now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable.* Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. *"So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility.* It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that *"they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."* He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that *"Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.* Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *"merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original*

appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *Vs.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *Vs.* S.C. PANDEY wherein the Supreme Court has held that *"only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."*

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner WW1 Sri K. Rajeshwaran
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1
W3	24-04-91	Xerox copy of the Circular of Respondent/ Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messangers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/ Bank to all Branches regarding identification of massenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.
W9	05-08-96	Xerox copy of the service certificate issued by Udagamandalam Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/bank regarding recruitment to subordinate care & service conditions.
W11	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G.Pandi
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Mudurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the Local Head Office circular about Conversion of part time employees and redesignate them as general attendents.
W24	31-12-85	Xerox copy of the Local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/996.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 34/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/491/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/491/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 34/2004

[Principal Labour Court CGID No. 332/99]

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Sivaraj : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Zonal Office, Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. Veeramani Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/491/98-IR (B-I) dated 12-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 332/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 34/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri P. Sivaraj, wait list No. 466 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Bhavani branch from 09-01-1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Bhawani branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 09-01-96, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Erode Main branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to

his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 465 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 465 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per

settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 466 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex: M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/ Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947.

Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. Ml to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *"the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is-'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.."* It further held that *"the Tribunal should look into*

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post

at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS

LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that ''the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri P. Sivaraj WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messnger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of massenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	19-11-86	Xerox copy of the service certificate issued by Bhavani Branch.
W10	29-06-89	Xerox copy of the service certificate issued by Bhavani Branch.
W11	22-10-91	Xerox copy of the service certificate issued by Bhavani Branch.
W12	13-10-04	Xerox copy of the service certificate issued by Erode Branch.
W13	Nil	Xerox copy of the administrative guidelines in Reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerod copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subuhraj.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W19	26-03-97	Xerox copy of the letter advising selection of part time menial—G. Pandi.
W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W22	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W24	9-07-92	Xerox copy of the minutes of the Bipartite meeting.
W25	9-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W26	7-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-7-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	9-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	9-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-5-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 36/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/515/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/515/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 36/2004

(Principal Labour Court CGID No. 334/99)

(In the matter of the dispute for adjudiation under clause(d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. J. Vijayakumar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. Veeramani, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/515/98-IR (B-I) dated 19-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 334/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 36/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri R. Vijayakumar, wait list No.466 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Udagamandalam branch from 15-05-1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Udagamandalam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Ooty branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that

his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/ Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.466 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category ; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 466 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has

no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 466 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in. the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1s. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner

working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.Ml and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates .While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates , date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is

further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in *the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS *Vs.* MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION

Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.'

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *Vs.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *Vs.* S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri R. Vijayakumar
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	08-12-86	Xerox copy of the service certificate issued by Udhagamandalam Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to of subordinate cadre & service conditions.
W11	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zoanl office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module circular letter about Engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 137/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/418/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 137/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/418/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 137/2004

[Principal Labour Court CGID No. 135/99]

(In the matter of the dispute for adjudciation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri A. Solarajan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/418/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 135/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 137/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri A. Solarajan, wait list No. 259 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Sriranagam branch from 27-1-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Srirangam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 27-1-1984, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Sriranagam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the

Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 259 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 259 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to

say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 259 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.Ml and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1. and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners

were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that" the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that Respondent/Bank has conducted the interview selected the temporary employees who have rep have submitted their application for absorption a bank's circular and therefore, their retrenchment In all these cases, the Petitioners were in emplo as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of

Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in *the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the freewill of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS' UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of

reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS *Vs.* K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS *Vs.* SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no nght to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year

should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door,; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be

absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others *Vs.* Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur *Vs.* Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation *Vs.* S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri A. Cholarajan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2	20-4-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies And filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service certificate issued by Rangam Branch.
W10	28-8-86	Xerox copy of the service certificate issued by Srirangam branch.
W11	2-9-88	Xerox copy of the service certificate issued by Srirangam branch.
W12	25-5-93	Xerox copy of the letter from Respondent/Bank to the Zonal Office regarding increment of Petitioner.
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W15	6-3-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W16	6-3-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.
W17	6-3-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post —J. Velmurugan.
W18	17-3-97	Xerox copy of the Service particulars—J. Velmurugan.
W19	26-3-97	Xerox copy of the letter advising selection of parttime Menial—G. Pandi.
W20	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W22	13-2-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W23	9-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W24	9-7-92	Xerox copy of the minutes of the Bipartite meeting.
W25	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W26	7-2-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-7-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	9-1-91	Xerox copy of the settlement.
M5	30-7-96	Xerox copy of the settlement.
M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 138/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/414/1998-आईआर(बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 138/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/414/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 138/2004

(Principal Labour Court CGID No. 136/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Jayaraman : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/414/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 136/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 138/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri K. Jayaraman, wait list No. 312 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tirukkoilur branch from 21-4-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tirukkoilur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 21-4-1981, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Tirukkoilur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the

Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 312 in wait list of Zonal Office, Chennai. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 312 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 312 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on staff matters, copy of which is marked as Ex.W8. Further the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals are given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at

the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. Ml to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the

provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in *the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS *Vs.* MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB I.C. 345 SECRETARY, KOLLAM JILLA HOTEL AND [illegible] WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is

available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door, ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC I Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others *Vs.* Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur *Vs.* Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation *Vs.* S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri K. Jayaraman WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

Ex. No.	Date	Description
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	21-1-82	Xerox copy of the service certificate issued by Tirukkoilur Branch.
W10	3-8-88	Xerox copy of the service certificate issued by Tirukkoilur branch.
W11	19-3-93	Xerox copy of the service certificate issued by Manalurpet branch.
W12	19-3-93	Xerox copy of the service certificate issued by Tirukkoilur branch.
W13	8-2-94	Xerox copy of the service certificate issued by Tirukkoilur branch.
W14	24-10-94	Xerox copy of the service certificate issued by Tiruppalapandal branch.
W15	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W16	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W17	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W18	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W19	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W20	17-3-97	Xerox copy of the service particulars—J. Velmurugan.
W21	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W22	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W24	13-2-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W25	9-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W26	9-7-92	Xerox copy of the minutes of the Bipartite meeting.
W27	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W28	7-2-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W29	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-7-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	9-1-91	Xerox copy of the settlement.
M5	30-7-96	Xerox copy of the settlement.
M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 139/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/403/1998-आईआर(बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 139/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/403/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 139/2004

(Principal Labour Court CGID No. 137/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. P. Veerappan : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Region-I, Trichirapalli : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/403/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 137/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 139/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri S. P. Veerappan, wait list No. 618 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Pondicherry branch from 19-10-1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Pondicherry branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 19-10-1985, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Pondicherry branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that

his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 618 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category; (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 618, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 618 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates .While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at

the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the

provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no nght to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is

available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. "Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE of KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *Vs.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *Vs.* S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "'the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri S. P. Veerappan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

Ex. No.	Date	Description
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	20-05-87	Xerox copy of the service particular of the Petitioner given by Pondicherry Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W11	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Valmurugan
W15	17-3-97	Xerox copy of the Service particulars—J. Velmurugan.
W16	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Maduria Module Circular letter about engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Biparite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 38/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/580/1998-आईआर(बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/580/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 38/2004

(Principal Labour Court CGID No. 336/1999)

[In the matter of the dispute for adjudiation under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Jagatheiswaran : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.,
Coimbatore

APPEARANCE

For the Petitioner : Sri V. S. Ekamberam, Authorised Representative

For the Management : M/s. K. Veeramani, Advocates

AWARD

The Central Government, Ministry of Labour, *vide* Order No. L-12012/580/98-IR (B-I) dated 26-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 336/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum -Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 38/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri R. Jagatheiswaran wait list No. 698 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Singanallur branch from 1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Singanallur branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Ganesapuran branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five Settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 698 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 698 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 698 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates' pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these

petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a Section 18(3) settlement nor section 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of

Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in *the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS' UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of

reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was valjdly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc* temporary employee who has been continued for one year

should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be

absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others *Vs.* Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur *Vs.* Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of sueh rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation *Vs.* S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri R. Jagatheesvaran WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

Ex. No.	Date	Description
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	1-5-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	01-07-87	Xerox copy of the service Certificate issued by Singanallur Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W11	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post —J. Valmurugan
W15	17-3-97	Xerox copy of the service particulars—J. Velmurugan
W16	20-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
W17	31-3-97	Xerox copy of the appointment order to Sri G. Pandi
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 37/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-12012/578/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-7-2007.

[No. L-12012/578/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT :

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 37/2004

(Principal Labour Court CGID No. 335/99)

(In the matter of the dispute for adjudiation under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri G. Sampath : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. Veeramani, Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/578/98-IR (B-I) dated 26-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 335/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 37/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri G. Sampath, wait list No. 336 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Salem Main branch from 14-02-1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Salem Main branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-2-86, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Salem Main branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in

service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.336 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category, (A) the temporary employees who were engaged for 240 days were to be considered and under category, (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category, (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 336 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in, W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 336 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A. of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248

CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates .While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as-sub staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger.

Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in *the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998

LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a

presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and ciroumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications; it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA VS. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *VS.* SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry

of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *VS.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *VS.* S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/ Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri G. Sampath WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

Ex. No.	Date	Description
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	15-5-87	Xerox copy of the service certificate issued by Salem Branch.
W10	03-12-86	Xerox copy of the service certificate issued by Belur, Salem Distt. Branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment of subordinate cadre & service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai zoanl office for interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकूलम के पंचाट (संदर्भ संख्या 271/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था ।

[सं. एल-41012/117/1995-आई आर (बी.-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 271/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the management of Southern Railway and their workmen, which was received by the Central Government on 30-7-2007.

[No. L-41012/117/1995-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P.L. Norbert, B.A., L.L.B., Presiding Officer

(Thursday the 19th day of July, 2007/
28th Asadha, 1929)

I.D. No. 271/2006

(I.D. No. 2/96 of Labour Court, Ernakulam)

Workman/Union : Shri P. V. Rajan,
C/o General Secretary,
Southern Railway Labour Union,
Edappally North,
Kochi-682 024.

Adv. Shri C. Anil Kumar

Management : The Divisional Personal Officer/
Divisional Safety Officer,
Southern Railway,
Palakkad-2

Adv. Shri P.M.M. Najeeb Khan

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of DPO, Southern Railway, Palghat in terminating the services of Shri P. V. Rajan w.e.f. 3-12-1990 is legal & justified? If not, to what relief is the workman entitled?"

2. The facts of the case in brief are as follows :

The workman Shri P.V. Rajan was employed as Sweeper-cum-Potter at Payangadi Railway Station. On the ground that he was unauthorisedly absent from 22-7-1978 onwards, a charge-sheet was issued to him, an enquiry was conducted and he was found guilty. The Disciplinary Authority removed him from service. According to the claimant the enquiry was an empty formality. He was not given opportunity to prove his innocence. The enquiry was conducted in violation of the principles of natural justice. The punishment is excessive. Disciplinary action is highly belated and barred by limitation. For the unauthorized absence of 1978 disciplinary action is taken in 1990. Charge-sheet itself is to be quashed. The workman is entitled to be reinstated with full back wages and consequential benefits.

3. According to the management necessary parties are not impleaded in the dispute. There is no retrenchment as defined u/s-2 (oo) of the Industrial Disputes Act and hence there is no industrial dispute. The workman had absented from 12-7-1978 to 16-7-1978 and then from 22-7-1978 onwards for a period of 11 years. He did not apply for leave or produce medical certificate until after 11 years. He made a representation on 10-11-1989 and requested permission to resume duty. The conduct of the worker is against Railway Services (Conduct) Rules, 1966. A charge-sheet was issued alleging unauthorized absence. In the enquiry the workman had fully participated and he was assisted by a defence representative. He was given sufficient opportunity to defend. The enquiry was conducted following the procedure under Rules. There is no violation of the principles of natural justice. The charge stood proved and hence the Disciplinary Authority imposed a punishment of removal from service w.e.f. 3-12-1990. He filed an appeal. The appeal was rejected. He approached Central Administrative Tribunal twice. There is no truth in the case of the workman that he was under ayurvedic treatment for a long period of 11 years. The second O.A. was filed in CAT challenging the finding of the Enquiry Officer and the order of punishment of the Disciplinary Authority. But the O.A. was dismissed finding that there was no merit in his case. The present dispute on the same subject matter is barred by rule of *res judicata.* The claim of the workman is liable to be rejected.

4. In the light of the above contentions the following points arise for consideration :

(1) Is the finding sustainable?

(2) Is the punishment excessive?

The evidence consists of the oral testimony of MW1 and documentary evidence of Ext. M1 on the side of management and no evidence on the side of the workman.

5. Point No (1) :

Shri P.V. Rajan while working as Sweeper-cum-Potter in Payangadi Railway Station was issued with a charge-sheet of having remained absent unauthorisedly from 12-7-1978 to 16-7-1978 and from 22-7-1978 onwards and having violated Rule 3 (1) (ii) (iii) of Railway Services (Conduct) Rules, 1966. He submitted an explanation which was not satisfactory to the Disciplinary Authority. Hence MW 1 was appointed as Enquiry Officer. Though the workman in his claim statement contended that the enquiry was conducted without following the principles of natural justice and he was not given sufficient opportunity to defend, when the matter came up for hearing this aspect was not seriously pursued. It is admitted that the workman had participated in the enquiry proceedings. He was represented by defence representative. The enquiry proceedings show that he was asked by the Enquiry Officer whether he had any evidence. But he did not want to adduce any evidence. Hence the management witness alone was examined. He was cross-examined by the defence. The Muster Rolls were marked on the side of the management by the Enquiry Officer. Thus the procedure for enquiry was followed and the principles of natural justice were complied with by the Enquiry Officer.

6. The allegation is that the workman remained absent from 12-7-1978 to 16-7-1978 and thereafter from 22-7-78 onwards. Though the workman has a contention that he had applied for leave from time to time with medical certificates, it is denied by the management. The workman was not able to prove submission of leave applications, even by production at least copies of applications. No doubt, as per Muster Roll he was marked absent from 12-7-1978 to 16-7-1978 and from 17-7-1978 to 21-7-1978 as sick. Thereafter from 22-7-1978 to 22-8-1978 initially attendance was marked as sick which was later scored off and marked as absent. According to the claimant the management corrected the marking 'sick' to 'absent' deliberately. The conduct of the management shows that it had recognized and acknowledged the illness of the workman upto 22-8-1978. Assuming it is true even then there is no explanation for the absence from 22-8-1978 till 10-11-1989 for a period of 11 years. There is no record to show that the workman had either applied for leave or even intimated the management about his medical treatment and illness. On 10-11-1989 he approached the management with a medical certificate of an ayurvedic doctor for his treatment from 22-7-1978 onwards. However the medical certificate was produced only on 10-11-1989. If he was bed-ridden for long 11 years he could have applied for leave through his family members or at least intimated in writing that he was under treatment. Naturally the management was not able to accept his application and medical certificate produced after 11 years. The fact that the Disciplinary Authority did not take action until after 11 years, would not exonerate him from the liability of applying for leave on time or exempt him from Rule 3 (1) (ii) (iii) of Railway Services (Conduct) Rules, 1966. He has no case that he was in coma for all these years. It was his duty as an employee to inform the office that he was unable to attend the duty and was under treatment. He had enough time to inform the management. But he approached the management only when he felt the need for joining duty and that was after a lapse of 11 years. In the absence of any convincing evidence or satisfactory explanation as to why he had not applied for leave the Enquiry Officer could not have drawn a different conclusion than to find that the workman remained absent unauthorisedly and he was guilty of the charge. There is no reason for this court to strike a different note.

7. It was pointed out by the learned counsel for the Railway that the workman had approached CAT, first by O.A. No.1872/91 for a direction to the Appellate Authority of Railway for expeditious disposal of appeal against the disciplinary action, and second O.A. No. 824/92 challenging the findings of Enquiry Officer and the punishment order of Disciplinary Authority. The judgment in O.A. No. 824/92 is produced along with the written statement. It shows that the issue regarding sustainability of the findings and proportionality of the punishment were considered by CAT and observed that the workman had failed to apply for leave for the period 1978 to 1989 at any point of time until he approached the management for getting re-engagement in 1989 and there is no merit in the case of the workman. The original application was dismissed by CATon 18-6-1992. Thereafter the workman raised an industrial dispute without disclosing the order of CAT and hence there was a reference. In view of the judgment of CATon merits on the same issue the present dispute is barred by the rule of *res judicata.* The same issue was raised and decided by CAT and that Forum was competent to decide the present dispute. Apart from the application of the doctrine of *res judicata,* on merit also the case of the workman cannot be sustained.

8. Point No. (2) :

The punishment imposed is removal from service. After remaining absent without information for a period of 11 years the Railway cannot be expected to reinstate him by imposing a lesser punishment. In the normal course an employee is presumed to have abandoned the job when nothing is heard about him for such a long time. The workman was not bothered about his job for 11 years. An employer cannot keep a post vacant for 11 years with an expectation that the absentee employee would turn up for duty. The violation of Railway Services (Conduct) Rules aforementioned invites major penalty of removal. There are no mitigating circumstances to warrant lesser punishment. In the facts and circumstances of this case the punishment does not appear to be disproportionate to the misconduct.

9. In the result, an award is passed finding that the action of the management in terminating the service of the workman Shri P.V. Rajan w.e.f. 22-7-1978 is legal and justified and he is not entitled for any relief. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 19th day of July, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman/Union :

Nil.

Witness for the Management :

MW1—Shri Muraleedharan—14-3-2003.

Exhibits for the Workman/Union :

Nil.

Exhibits for the Management :

M1—Domestic Enquiry file.

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब व सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 54/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-07-2007 को प्राप्त हुआ था ।

[सं. एल-12012/28/2005-आई आर (बी.-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2007

S.O. 2392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Punjab & Sind Bank and their workmen, received by the Central Government on 27-07-2007.

[No. L-12012/28/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT—II, NEW DELHI

Presiding Officer : R. N. Rai

I. D. No. 54/2005

PRESENT

Sh. G. S. Chaturvedi : 1st Party

Sh. J. Buther 2nd Party

In the Matter of :

Shri Sheeshpal,
S/o. Shri Chhatra Pal,
R/o. Staff Quarter No.15, Ambedkar Polytechnic,
Near Railway Crossing, Madhuban,
Near Shakkarpur, Delhi,
Delhi-110 092.

Versus

The Chairman cum Managing Director,
Punjab and Sind Bank,
21, Rajendra Place, New Delhi,
New Delhi-110 008.

AWARD

The Ministry of Labour by its letter No. L-12012/28/2005-IR (B-II) Central Government Dt. 13-07-2005 has referred the following point for adjudication.

The point runs as hereunder :—

> "Whether the action of the management of Punjab and Sind Bank in terminating the services of Shri Sheeshpal, Ex. Part-time Sweeper is just, fair and legal? If not, what relief workman is entitled to and from which date."

The workman applicant has filed claim statement. In the claim statement it has been stated that the workman was engaged by the management at their office located at H-11, Connaught Place, behind Plaza, New Delhi-110 001, for the purpose of cleaning and sweeping this premises of the management bank, where all the four floors in the four-storeyed premises were being cleaned by the workman w.e.f. August, 1994. In addition to this duty, the workman was also asked to serve water to all the staff members and fill all the coolers in the four-storeyed office of the management bank with water w.w.f. 01-06-1995. The workman was given a paltry sum of Rs. 40 for doing this job, which was well below the minimum wages prescribed under Minimum Wages Act.

That the workman worked without any break in this office of the management till his illegal termination. His duty hours started from 8:30 AM in the morning till 7:00 PM on all the days including Saturdays. He was not given the benefit of weekly off, holidays, was not paid any overtime or grant any leave or any other benefits whatsoever, except the paltry sum of Rs.40.

That the workman worked in this premises till August, 1998, after which the office of the management was shifted to Scindia House, Connaught Place, New Delhi, where also the workman worked without any break till December, 2003, when he was verbally told not to come.

That the services of the workman were warranted and were taken by the management as its regular sweepers, namely Bajinder Singh and Shri Rameshwar Singh were absenting from the duties w.e.f. August, 1995 and 4-3-1996 respectively. Shri Rameshwar Singh later on expired on 07-03-1999. The workman worked for a continuous period of 240 days years after years since August, 1994 and despite the fact that there was regular work with the management, the management did not regularize the workman in order to exploit him. It is pertinent to mention here that in a letter dated 24-07-1996, it was clearly communicated by the Head Office (Personnel Deptt.) to the Head of the office, where workman was engaged by

the management, that they do not have any spare sweeper at Head Office and advised the Head of the Office of the workman, to make its own arrangements. This further shows that there was a permanent work with the management.

That apart from the job of cleaning the premises and serving and filling water as stated above, the workman was also doing all sorts of a Peon i.e. serving water, pushing files, ordering tea/coffee for the officers etc. Besides, he was also deputed to outdoor duties, some of the instances of which are as follows :

(a) collecting dak of the Hd. Office (Foreign Exchange) HOFEX from the Post Box of the bank at Post Office, Gole Market daily.

(b) depositing Income Tax Challan at Reserve Bank of India.

(c) depositing cheques of the staff in different banks, upkeep of record, delivering dak at various offices and branches of the bank including at Rajendra Place office of the bank.

(d) depositing electricity and water bills of the bank with NDMC, collecting calendars and other stationery from the Stationery Department of the bank.

It is respectfully submitted that conveyance bills of the workman for these outdoor duties were duly passed by the management.

That despite assurances of regularization of the workman by the management, he was not regularized in spite of number of requests and despite availability of permanent work with the bank. It is respectfully submitted that when in the month of December, 2003 the workman made a further verbal request with the head of the HOFEX asking for his regularization and payment of benefits to him as he had been toiling hard for the last ten years, he was verbally told not to come to the work, after the workman was exploited to the hilt by the management. The management did not assign any reason for the illegal termination of the workman.

That in reply to the claim of the workman before the Conciliation Officer, it has been alleged by the management that he was terminated as the workman misrepresented himself as employee of the bank by filing forged papers and availed loan from Independent Bank Co-op. Urban (SE) Thrift and Credit Society Limited, Hissar. It has been further alleged by the management that the workman is not suitable for bank employment in view of his fraudulent acts/conduct. It is respectfully submitted that this is a bald averment of the management bereft of any evidence, casting stigma upon the workman. As per settled law, when a stigma is cast upon an employee, he cannot be terminated without following the principles of natural justice by way of conducting departmental inquiry. The termination of the workman is thus all the more illegal in view of this bald averment of the management.

That in terms of the own circular of the bank, a sweeper is entitled to a particular scale of wages in view of the area cleaned/mopped by him and keeping in view the area that was being cleaned by the workman, he is entitled to full scale of wages. Despite that, the workman was given a paltry sum of Rs. 40 per day in the year 1995, Rs. 60 till 13-05-2000, when the same was revised to Rs. 75 per day upon repeated pleadings of the workman to the management. It shows that the workman was compelled to work even below the minimum wages prescribed under the Minimum Wages Act. The management is thus, liable to be prosecuted and punished under the provisions of the Minimum Wages Act.

Apart from the above unfair labour practice and illegality by the management, in order to give artificial breaks, the management further committed the illegality by making the payment of this paltry sum to the workman in different fictitious names, some of which are Pradeep, Kuldeep Singh, Rakesh Kumar, Ram Singh, Joginder Singh etc. None of these persons ever worked with the management and the workman was rather compelled to sign, while taking payment in the name of these persons. The workman was also paid wages in the name of Rajpal who is his brother, though Rajbeer worked with the management.

In view of the facts and circumstances mentioned above, it is, therefore, prayed that this Hon'ble Tribunal may kindly be pleased to ;

(a) direct the management to reinstate the workman with back wages w.e.f. August, 1994 in regular scale of pay and grant all the attendant benefits from the date of his initial engagement.

(b) grant the cost of the present litigation to the workman.

(c) pass any other or further order(s) which this Hon'ble Tribunal/Court may deem fit and proper in the facts and circumstances of the case.

The management has filed written statement. In the written statement it has been stated that claimant was never recruited in accordance with the recruitment procedure of the Bank of being appointed in the services in the Bank. The bank has its own recruitment policy/procedure which includes reservations to SC/ST, etc. including calling candidates from Employment Exchange. The claimant was never subjected to the recruitment procedure. He was never appointed in the service of the bank in accordance with the bank procedure. Hence he cannot claim any right to appointment/employment in the bank, as claimed in the statement of claim. The claim of the claimant is liable to be rejected outrightly.

That without prejudice to the submissions and contentions it is submitted that the claimant does not deserve any relief from the Hon'ble Tribunal as he had misrepresented to be an employee of the bank for taking loan from the Independent Bank Co-op. Urban (SE) Thrift

& Credit Society Limited, Hissar by filing forged papers and availed loan from Independent Bank Co-op. Urban (SE) Thrift and Credit Society Limited, Hissar. The Society has filed suit against him and the bank. When asked about his fraudulent actions, he stopped coming to work. However, it is submitted that even otherwise the claimant is not suitable for bank employment in view of his fraudulent acts/conduct even as temporary part-time sweeper.

It is submitted that the claimant was engaged on a temporary basis on daily wages for a specific period from 01-06-1995 to 30-09-1995 for filling water in desert coolers. He was paid for the day he was engaged. He was never engaged prior to 01-06-1995 for any work as alleged in this para. It is incorrect that he was cleaning and sweeping four floors. There were two permanent part time sweepers namely Bijender Singh and Rameshwar Singh in Head Office, Foreign Exchange for cleaning and sweeping work. The Head Office, Foreign Exchange was shifted to Scindia House in August, 1998 which has only two floors and approximate area of the premises is 3700 Sq. ft.

It is denied that the claimant worked from 8:30 morning till 7.00 PM. Admittedly he was engaged on daily wages on temporary basis for filling coolers with water and this work was done in not more than one hour at best two hours for the day he was engaged. Therefore, the question of his working for the whole day as alleged does not arise. There is also no question of weekly off, holidays, overtime or leave to the claimant, as he was not recruited at all for the employment of the bank, but as casual. The allegation that the claimant worked without any break is incorrect. In fact his engagement came to an end on 30-09-1995. Thereafter he was engaged as part time temporary sweeper in July 1996 and sometime in 1998 on daily wages. At no point of time the claimant was ever put in a continuous service of 240 days in a calendar of 12 months period. Hence he is not entitled to protection under Section 25 F of the I. D Act, 1947. There is no retrenchment as alleged and the claim is not tenable and liable to be rejected.

That the claimant was engaged on temporary basis as part time sweeper. He was not engaged continuously. He was engaged as and when there was sweeping/ cleaning work. Even otherwise the bank had two permanent part time sweepers. It was only during their absence the claimant was engaged. Presuming though not admitting that the claimant had put in 240 days of continuous service, he is not entitled to the relief of reinstatement as claimed.

That the claimant was engaged temporarily on daily wages from 01-06-1995 to 30-09-1995 for some periods for filling water in desert coolers and was paid for the day he was engaged. Thereafter he was engaged in July, 1996 and sometime in 1998 as part time sweeper temporarily on daily wages. He was not engaged for any other work as alleged in this para. The claimant never performed the duty of Peon as mentioned in para-5 of the claim. The duties of Peon were performed by permanent peons in the hranch. If at all he had performed any duty occasionally, that would not give him right to claim employment as sought in his claim.

That the claimant was never given any assurance for regularization. He was not engaged as per the recruitment. There was no permanent work as alleged. It is wrong and denied that he was verbally told not to come.

That the claimant on his own stopped coming to work. There is no termination. The allegation of violation of principles of natural justice is misconceived which will not be attracted at all in the facts of the case.

That the claimant is not entitled to scale/wages under BPS as he was engaged on casual basis/temporary basis. The scale/wages are available to permanent employees only. The claimant was engaged temporarily for filling of water in desert coolers on daily wages from 01-06-1995 to 30-09-1995 for some periods. Thereafter for some time in July, 1996 and 1998 as part time sweeper on casual/ temporary basis. He was never engaged continuously. He was engaged when permanent part time sweeper were absent or any other contingency. The allegation of violation of Minimum Wages Act is misconceived. It is denied that there is any unfair labour practice on part of the management. It is denied that the bank made payment in fictitious names as alleged in this para.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heared arguments from both the sides and perused the papers of on the record.

From the pleadings of the parties the following issues arise for adjudication :

1. Whether the workman has completed 240 days service in between the period of his employment, August, 1994 to December,2003?
2. Whether the workman is entitled to reinstatement?
3. To what amount of back wages the workman is entitled?
4. Relief if any?

ISSUE No.1.

It was submitted from the side of the workman that he worked continuously from August, 1994 to December, 2003 as Sweeper. He performed miscellaneous duties also. He was paid Rs. 40 per day initially and it was enhanced to Rs.60-75 finally.

It was further submitted that the workman worked regularly from 8:30 AM to 7:00 PM on all days including

Saturdays regularly. There was not given weekly holidays. He worked for 240 days in all the years of his employment. The nature of job is permanent. The workman was not paid all the benefits and the management made him victim of exploitation.

It was further submitted that he performed the work of a Peon just as serving water, pushing files, serving tea/ coffee to the officers and staffs and he performed outdoor duties just as collecting Dak, depositing income-tax and cheques and electricity and water bills. His services were terminated illegally verbally in December, 2003 when he made request for regularization.

It was further submitted that even Sweeper is entitled to a particular scale of wages in view of the area cleaned and mopped by him and keeping in view the area the workman was entitled to full scale of wages. Payment was made in fictititous names just as Pradeep, Kuldeep Singh, Rakesh Kumar, Ram Singh, Joginder Singh etc.

It was submitted from the side of the management that the applicant was never recruited according to the recruitment procedure of the management. The bank has its own recruitment policy and procedure. He was never subjected to recruitment procedure. He was never appointed in the service of the bank in accordance with the bank's procedure.

It was further submitted that the workman mis-represented to be an employee of the bank for taking loan from the Independent Bank, Co-operative Urban (SE) Thrift and Credit Society Limited, Hissar by filing forged papers and availed loan from the said Thrift Society. A suit was filed against him and the bank was made a party to the suit.

It was further submitted that the workman as engaged on temporary basis on daily wages for specific period. He was paid for the days he worked.

It was further submitted that he was engaged when there was sweeping and cleaning work. The bank had 2 permanent part-time sweepers, it was only during their absence the claimant was engaged.

It is vivid from B-32 letter dated 24-07-1996 that the 2 part-time sweepers Shri Vijender Singh and Shri Rameshwar Singh were absenting, the name of the workman Shri Shishpal was recommended. It has been mentioned in letter dated 30-06-1998, paper no. B-33 and it has been mentioned in that the workman is being taken from 24-01-1996 in view of the instructions of Chief Manager and the Branch Manager forwarded the application of Sh. Shishpal for considering him as part-time sweeper. These letters indicate that the workman was working regularly atleast from 04-03-1996. By letter dated B-35, the AGM recommended the name of Sh. Shishpal for part-time sweeper. This letter establishes that the workman was working as part-time sweeper up to 15-01-2000. Letter dated B- 36 also establishes the fact that Sh. Shishpal is working from 04-03-1996 and onward in view of the absence of Shri Vijender Singh and Shri Rameshwar Singh. There are several such letters written by the management to the Chief Manager which indicate that the workman Sh. Shishpal has been working continuously since 04-03-1996 and he has been receiving payment. The AGM by letter dated 01-08-2001 requested to absorb the workman Sh. Shishpal on regular basis. All these letters are photocopies but these photocopies have not been denied. So they have the force of original documents as the original letters are in the possession of the bank. The workman has filed photocopies of vouchers. These vouchers have also not been denied.

It transpires from perusal of these vouchers that payment have been made even for miscellaneous work. These vouchers are from B-63 to B-145. These documents establish that the workman alone has been engaged for the work of sweeping, cleaning and even for the office work and he worked continuously from 1996 to December, 2003 and payment to him has been made by vouchers.

The argument of the management that the workman was engaged in the absence of part-time sweepers is misconceived. As per the records no document regarding engagement of part-time sweepers other than the workman Sh. Shishpal has been brought on record. There is no merit in the contention of the management that the workman stopped coming when an inquiry was made regarding taking of loan from Thrift and Credit Society Limited. No document regarding the suit has been filed.

The workman was removed in December, 2003 and this case has been filed in 2005, so there is no force in the contention of the management that he stopped himself coming. In oral evidence the workman has stated that it is correct that he stopped going to the bank when the bank enquired him about the loan taken from Co-operative Society. Again said he was refused the work when he went to the bank. Even it is assumed for the time being that the workman stopped going himself, the management was duty bound to pay him retrenchment compensation but the management has not done so.

The workman has worked for more than 8 years. It cannot be believed that he stopped going to the bank himself. He has not replied. knowingly to the suggestion putforth by the management being a layman but he has asserted that he was refused work when he went to join.

The workman has established that he worked continuously from August, 1996 to December, 2003. So he has worked continuously for 8 years. There was no other part-time sweeper or Peon in the branch of the bank. The workman alone discharged sweeping, cleaning and miscellaneous work as is vivid from vouchers. Thus, it is proved that the workman has completed 240 days in each year i.e. from 1996 to 2003. This issue is decided accordingly.

ISSUE No. 2.

It was submitted from the side of the bank that reinstatement is not the only relief in all the cases of illegal termination. Section 11 A of the I. D. Act, 1947 provides for payment of compensation also. It was submitted from the side of the workman that compensation is payable in cases where an undertaking has become sick or it has been closed or it is in economic loss. It has not been established that the bank is in economic loss and it is a sick Industry.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of UP and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25 F, G of the I.D. Act are attracted. In Section 25 of the I.D. Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation has been paid to the workman.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid Section 25 F of the I.D. Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25 F the service is continued and reinstatement follows as a natural consequence.

I.D. Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed unnecessarily so Sections 25 F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of I.D. Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of I.D. Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 & 309 are infringed. There is no constitutional mandate that the Government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and adhoc appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing the services of the workman have not been declared un-constitutional. Reinstatement is the remedy provided in the I.D. Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11 A of the I.D. Act stipulated that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal

and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006 (4) Scale has not annulled Section 11 A of the 10 Act and the legislature has authorized this Tribunal to set aside dismissal or discharge on its consideration and direct reinstatement. The judgment cited by the management is not applicable in the facts and circumstances of the case.

A three Judges bench of the Hon'ble Apex Court has held in 1993-II-LLJ that termination of services affects the livelihood of not only of the employee but also of the dependents. So in case of illegal termination of service the workman should be reinstated.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal disengagement. This is a special remedy provided in I.D. Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the I.D. Act are still constitutional and they are to be given effect too.

In case the workman is reinstated with back wages the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that Section 25, G & H of the ID Act are not violated.

In view of the law cited above and the facts pertaining in this case, the workman is entitled to reinstatement. This issue is decided accordingly.

ISSUE No. 3.

It was submitted by the management that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wags need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968-three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer.

In 2005 IV AD SC 39—three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the ID Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

The workman applicant has worked continuously for 8 years. He is not working in any establishment. No hard and fast rules can be laid for awarding back wages. It depends upon the facts and circumstances of the particular case. There is no straight jacket formula for awarding back wages. The workman has worked continuously for 8 years. He is not working in any establishment. He is a manual worker. He must be doing some sort of work in order to sustain himself and his family. In the particular facts and circumstances of the case the workman is entitled to get 50 per cent back wages.

ISSUE No. 4.

It has been held above that the workman is entitled to reinstatement. He is entitled to 50% back wages. The management should reinstate the workman with 50% back wages. This issue is decided accordingly.

The reference is replied thus :—

The action of the management of Punjab and Sind Bank in terminating the services of Shri Sheeshpal, Ex. Part-time Sweeper is neither just nor fair nor legal. The management should reinstate the workman along with 50 back-wages within two months from the date of the publication of the award.

The award is given accordingly.

Date : 19-7-2007 R. N. RAI, Presiding Officer

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पूणे, के पंचाट (संदर्भ संख्या 22/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-08-2007 को प्राप्त हुआ था ।

[सं. एल-41011/53/2001-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2002) of the Industrial Tribunal Court, Pune as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 01-08-2007.

[No. L-41011/53/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI S.M. KOLHE,
INDUSTRIAL TRIBUNAL,
PUNE

Referenee (IT) No. 22 of 2002

BETWEEN

The Management of the Central Railway
The Divisional Railway Manager,
Central Railway,
Pune-411 001. .....First party.

AND

Shri Amar Singh Tomar and
24 workmen employed under them. .....Second party.

In the matter of : Reinstatement of 25 workmen in the category of Asstt. Vendors/Helpers and thereafter their absorption as regular employees of Central Railway, Pune as per the list attached to the reference.

APPEARANCE

Shri V.D. Bapat,
Advocate for First Party.

Shri V.G. Mame,
Advocate for Second Party.

Date : 30-09-2006

AWARD

1. Reference pertaining to adjudication of industrial dispute between Central Railway and 25 aggrieved employees, arises out of the following facts.

Catering Department is maintained by Central Railway. Food articles including cold-drink, tea and coffee are sold out through catering department of the Central Railway to the passengers. The work of selling the food articles through catering department, is carried out through canteen and various stalls installed on the platforms of the Railway Station. Trolleys, trays, etc. are the instruments used for transporting such food articles from one place to other place on the platforms of Railway Station.

2. Present industrial dispute pertains to the affair of Pune Railway Station. 25 aggrieved employees have claimed themselves as Asstt. Vendors/Helpers. According to them, they have been selling the food articles of railway department at Pune Railway Station for several years through catering department. They have been working under the control of officers of catering department. Aggrieved employees are provided with identity cards and badges by railway department. They had undergone the medical examination which was conducted by the railway hospital. They are paid the commission per month as per the sale of food articles carried out by them. In all, there were 80 such vendors at Pune Railway Station, 46 vendors have been absorbed and given regular appointment in Group'D' by the Central Railway. However, present aggrieved 25 employees are left out and not considered for absorption and regularisation.

In the month of March, 2001 aggrieved 25 employees were stopped from working as Vendors/Helpers at Pune Railway Station. They were prohibited from selling food articles of catering department of railway at Pune Railway Station. Central Railway illegally stopped the activities of aggrieved 25 employees pertaining to sell of food items of the railway department at Pune Railway Station

Aggrieved 25 employees the Central Railway to allow them to sell the food articles of catering department at Pune Railway Station. Central Government did not pay heed to their request. They took their grievance before the competent authority. There was no amicable settlement between parties. So, industrial dispute between Central Railway and aggrieved 25 employees is referred for adjudication as per the law.

3. Aggrieved 25 employees have prayed for reinstatement in their employment as Asstt. Vendors/Helpers in Central Railway at Pune. They have also prayed for compensation. They have further requested to absorb and regularise them in Central Railway. Accordingly aggrieved 25 employees have made out their case by filing statement of claim.

4. Central Railway filed written statement. It is mainly contended that there is no relationship of employer and employee between the parties. It is denied that aggrieved 25 employees sell food items of catering department of railway. It is denied that they were given identity cards and badges. It is denied that medical examination of aggrieved employees was conducted and they were paid commission as per the sale of food items actually carried cut by them at Pune Railway Station. It is contended that aggrieved 25 employes have no concern with Central Railway or catering department of

the Railway. It is further contended that procedure is laid down under the rule to appoint vendors or commission agent to sell food items through catering department of railway. It is contended that aggrieved 25 employees have not been appointed for selling the food articles as per said procedure prescribed under the rule. It is contended that aggrieved 25 employees are working under vendors or bearers of catering department of Central Railway. It is contended that they are helping vendors/bearers to sell the food items at Pune Railway Station Platforms. It is further contended that 46 employees who were absorbed and regularised in Central Railway, were Commission Agents of catering department and aggrieved 25 employees cannot stand on the same footing with them. it is further contended that aggrieved 25 employees were stopped from selling food articles at Pune Railway Station in March, 2001 since direction was issued to that effect by higher authority of Central Railway to restrain unauthorised persons to sell food articles at Railway Station. It is contended that action of Central Railway in stopping aggrieved 25 employees from selling food items at Pune Railway Station, is quite legal and proper. It is contended that aggrieved 25 employees are not entitled for any of the reliefs as claimed by them in statement of claim.

5. In view of rival pleadings of both the parties, the following points arise for my determination :

POINTS :

(1) Whether aggrieved 25 employees can be treated as employees of Central Railway ?

(2) Whether aggrieved 25 employees are entitled for relief of reinstatement ?

(3) Whether aggrieved 25 employees should be absorbed in the services of Central Railway as prayed ?

(4) What order ?

6. My findings on the above points for the reasons stated below, are as under :

FINDINGS :

(1) Affirmative.

(2) Affirmative.

(3) Affirmative.

(4) As per final order.

REASONS

POINT NO. 1 TO 4 :

7. Aggrieved 25 employees have filed their respective affidavits in support of their case, They have been cross-examined by the other side. Similarly 2 witnesses have stepped in witness box on behalf Central Railway. Both parties have filed some documentary evidence to which I refer at proper time and place in the further discussion.

8. Both witnesses of Central Railway have categorically admitted in their evidence that 25 aggrieved employees have been selling the food items of catering department of Central Railway at Pune Railway Station for several years. In-fact, employees have made out specific case in their evidence that they have been selling the food itmes of railway department at Pune Railway Station as Asstt. Vendors/Helpers and they are paid commission as per sale of food items and they are the employees of Central Railway since they are attached to catering department.

9. At the outset, I would like to point that catering departments is maintained by Central Railway. It is part and parcel of Central Railway. Food items are sold out through catering department to the passengers. Activity of catering department for selling the food items is carried out through canteen and stalls installed on platforms of Railway Station. Moreover, trolleys and trays and other equipments are used for transporting the food articles from one place to other on railway platforms. Vendors are appointed to sell the food articles of catering department to the passengers at Railway Station. They are paid the commission as per the sale carried out by them of the food articles by railway. Thus, catering department is essential and integral part of the activity of Central Railway. In-fact, one cannot separate catering department from Central Railway.Moreover, it is statutory obligation of the Central Railway to run catering department and to carry out essential service of selling the foods to the passengers. So, whatever, machinery installed to carry out the services of catering department, is part and parcel of functioning of Central Railway. Since the aggrieved 25 employees have been seeling the food articles of catering department of Pune Railway Station for last several years, are part and parcel of machinery of catering department of Central Railway.

10. Both witnesses of Central Railway have admitted in their evidence that aggrieved 25 employees are holding identity cards and badges. They have also admitted that the identity cards badges are issued by Chief of Catering Department. In-fact, those identity cards and badges were produced in the Court during the hearing of this matter. It was revealed from careful perusal of said identity cards and badges that those were issued by Central Railway and those were duly singned by competent authority of Central Railway with the seal of the department. Thus, aggrieved 25 employees are holding authentic and reliable documentary evidence in the form of identity cards and badges to show that they have been selling the food items of catering department of railway at Pune Railway Station for several years. It cannot be ignored that both witnesses of Central Railway have admitted in their respective evidence that aggrieved 25 employees had undergone medical examination in Railway Hospital and they were found medically fit in the said examination. In-fact, aggrieved 25 employees are possessing medical examination fee receipts which were issued by Railway Hospital. Both witnesses of Central Railway admitted in their evidence that commission is paid to the vendors for selling out food articles of catering department at Pune Railway Station. It is true that aggrieved 25 employees have no documentary evidence with them to

show that they have been getting commission per month for sale of food articles for several years. However, employees have made out a case that the entire documentary evidence in respect of particulars of sale of food articles and particulars of commission to be paid to the vendors, is maintained and retained by Central Railway. It is not the case made out by both witnesses of Railway Department that salary slips or commission slips are issued to the vendors for sale of food articles of catering department at Railway Station. In-fact there is no such practice of issuing commission slip or salary slip to the vendors for sale of food articles of catering department at Railway Station. Thus, aggrieved 25 employees are not expected to produce documentary evidence on the point that they were getting commission per month for sale of food articles of railway at Pune Station. Once Central Railway has not disputed the fact that aggrieved 25 employees have been selling the food articles of railway at Pune Railway Station for several years, it can be easily inferred that said employes would have been paid some amount for the said work of sale of food articles by the Central Railway. In ordinary course of nature, it is not possible and also not expected that the employees would sell the food articles of railway without getting any monetary benefit from the said work. After all, activity of selling the food articles of railway at Pune Railway Station by aggrieved 25 employees, is the only source of their livlihood and they have been doing the said work for the last several years. It cannot be ignored that there were 80 vendors at Pune Railway Station who were selling the food articles through the catering departmentat Pune Railway Station. It is not in dispute that 46 such vendors have been absorbed and regularised in the employments of Central Railway in Group 'D' as Khalasi and they were accepted as the employees of Central Railway. Aggrieved 25 employees have been doing the same work at Pune Railway Station which the alleged 46 vendors were doing. In-fact aggrieved 25 employees are on the same footing with said 46 vendors who are absorbed and regularised in employment of Central Railway in Group 'D' as Khalasi. There is absolutely no evidence to show that the activities carried out by alleged 46 vendors were different that the activities of present aggrieved 25 employees at Pune Railway Station perttaining to the sale of food articles. It has not come on record as to why aggrieved 25 employees are left out and not absorbed and regularised by Central Railway at par with other 46 employees who were absorbed and regularised as Khalasi. It is not the case of Central Railway that aggrieved 25 employees are not eligibile and not competent for absorption and regularisation in the employment of Central Railway. It is also not the case of the Central Railway that the service record of aggrieved 25 employees is bad. In-fact, both witnesses of Central Railway have categorically stated in their evidence that there is no complaint against the aggrieved 25 employees as far as their work of selling the food articles at Pune Railway Station is concerned. I reiterate that aggrieved 25 employees are at a par with 46 employees who were absorbed and regularised in the employment of Central Railway as Khalasi. The case made out by Central Railway that aggrieved 25 employees were given the work by vendors and not by catering department, is not substantiated and supported by the evidence. Central Railway has not examined any of the vendors or commission agent working at Pune Railway Station, to show that aggrieved 25 employees were given the work by them and aggrieved 25 employees were only asisting the vendors for selling the foods and they had no concern with Catering Department of Central Railway.

If at-all, aggrieved 25 employees were employed by the Vendors/Bearers to assist them in selling food articles at Railway Station and Central Railway has no concern with them, then how the identity cards and badges were issued to such aggrieved 25 employees by Central Railway and why Central Railway did the process of carrying out medical examination of said 25 aggrieved employees in its Railway Hospital, by accepting medical fees and issuing receipt on behalf of Central Railway. Thus, action of involvement on the part of Central Railway in issuing badges and identity cards and getting done medical examination of aggrieved 25 employees show the nexux of said employees with Central Railway in respect of their work of selling food articles.

11. It is a matter of record that in the month of March, 2001, Central Railway stopped aggrieved 25 employees from selling the food articles at Pune Railway Station. It is pertinent to note that only in the month of March, 2001, 46 similar employees from the said cadre, were absorbed and regularised as Khalasi in Group 'D' employment by Central Railway. It can be easily inferred from such a quick and immediate action on the part of Central Railway in stopping the aggrieved 25 employees from selling the food articles that Central Railway might be afraid of absorbing and regularising the aggrieved 25 employees also in near future. So, action of stopping aggrieved 25 employees in selling the food articles at Pune Railway Station only in the month of March, 2001 by the Central Railway, is not bona fide. It cannot be ignored that Central Railway acted arbitrarily in stopping the work to all aggrieved 25 employees without giving them notice or compensation or opportunity of hearing. Thus, unilateral action of Central Railway in stopping the work of aggrieved 25 employees in the month of March, 2001, is not justified.

The above action on the part of Central Railway further corroborates the fact that aggrieved 25 employees were dealt with by Central Railway in respect of their work of selling food articles. If aggrieved 25 employees were engaged by the Vendors/Bearers, then why the Central Railway did not take such action through the Vendors/Bearers, by informing them to stop their helpers i.e. aggrieved 25 employees from working on platform.

12. Taking into consideration the above discussion, I am of the opinion that oral and documentary evidence on record is sound and sufficient enough to show that aggrieved 25 employees can be treated as employees of Central Railway and moreover, their demand of

reinstatement as well as absorption in the employment of Central Railway, in quite just. I reiterate that the services rendered by aggrieved 25 employees for several years in selling food articles of catering department of railway at Pune Railway Station coupled together with the fact that they are provided with identity cards and badges duly signed and sealed by Central Railway and the fact that similar and identical 46 such other employees who were absorbed and regularised in Central Railway, are at par with present 25 aggrieved employees, I am of the opinion that this is a fit case where aggrieved 25 employees are justified in getting reliefs as claimed by them in this matter.

13. On behalf of Central Railway, case law reported in **2006-II-L.L. Pg 722 Hon'ble Supreme Court** was cited. The Principle laid down by Their Lordships pertains to the matter of right of temporary employee in seeking permanent status on the basis of long service. It is true that such right is not recognised as per the principle laid down in this case law. In-fact, the ratio of this case law is not attracted to the present matter. Aggrieved 25 employees are not the temporary employees of Central Railway and they are not seeking relief of permanency on the basis of their long service. Infact it is not the case of any party in this matter that aggrieved 25 employsee were temporary employees or were appointed on daily wages. Infact aggrieved 25 employees are discharging the duty of sale of food articles which is required to be carried out permanently for indefinite period, so long as Central Railway is functioning and providing the services of transport to the public at large.

14. Though services of 25 aggrieved employees were stopped from working in the month of March 2001 by Central Railway, as per order passed below Exh. U-3 by this Court in this matter, the aggrieved 25 employees were allowed to do the work of selling the food articles of catering department at Pune Railway Station which they were doing before discontinuation of their services. As per the said orders, aggrieved 25 employees have been selling the food articles of catering department of railway at Pune Railway Station even today.

It is a matter of record that management of catering department of Central Railway is being handed over to I.R.T.C. i.e. Indian Railway Tourism Corporation. As per order passed below Exh. U-52, Central Railway was given liberty to continue the process of taking over management of catering department without disturbing the arrangement of work of aggrieved 25 employese at Pune Railway Station.

15. It has come in the evidence of both witnesses of Central Railway that day by day railways are flooded with huge crowd and consequently the work of catering department is required to be carried out with maximum power. Both witnesses of Central Railway have stated in their cross-examination about number of platforms and number of stalls and number of equipments such as trolleys and trays required for selling of food items of canteen department at Pune Railway Station. They have also admitted that said work of selling the food articles at Pune Railway Station is divided in three shifts. Considering the scenario of Pune Railway Station pertaining to number of railway platforms, number of food stalls and number of equipments such as trolleys, trays, etc. and heavy rush and crowd of the passengers, I am of the opinion that services of aggrieved 25 employees are very much necessary and required for catering purpose at Pune Railway Station, Once 46 such employees are absorbed and regularised as Khalasi for Group 'D' employment of the Central Railway, there is a shortage of employees for carring out the work of catering. So, aggrieved 25 employees can be given the same work of selling of foods of catering department of Central Railway at Pune Railway Station and can be absorbed as employees either in catering department or other department of railway.

16. In view of the above discussion, I am of the opinion that aggrieved 25 employees have substantiated and duly proved their demand of reinstatement as well as absorption and regularisation in the employment of Central Railway at Pune by adducing authentic, cogent and reliable evidence. So. I answer the Point Nos. 1 to 3 in the affirmative and Point No. 4 accordingly.

17. In the result, I allow the reference and pass the following Award.

AWARD

(1) Referenee (IT) No. 22 of 2002 is allowed.

(2) Aggrieved 25 employees can be treated as employees of Central Railway.

(3) Demand of reinstatement as well as absorption and regularisation in catering department or other department of Central Railway as made by 25 aggrieved employees, is duly substantiated and proved and hence it is allowed.

(4) As per order passed by this Court on 30 October, 2002 below Exh. U-3, first party was directed to allow the aggrieved 25 employees to work as Vendors/Helpers in Catering Department on the same terms and conditions which were prevailing before the discontinuation of their services. Accordingly aggrieved 25 employees are doing the work as per the said order.

(5) As per order dt. 23-2-2005 passed by this Court below Exh. U-52, first party was temporary restrained from disturbing the present work of aggrrieved 25 employees, though liberty was given to the first party to implement the policy of change of management of Catering Department.

(6) Irrespective of above mentioned policy of change of management of Catering Department. Central Railway shall allow the aggrieved 25 employees to continue to do the work of selling of food items of Catering Department at Pune Station and those employees should be absorbed and regularised either in Catering Department or other department of Central Railway in due course.

(7) Award be prepared accordingly.

S.M. KOLHE, Industrial Tribunal

Date : 30-9-2006.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. उड़ीसा माईनिंग कारपोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या आई.डी. सं. 23/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2007 को प्राप्त हुआ था ।

[सं. एल-29011/3/2004-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 23/2004) of the Central Government Industrial Tribunal / Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the Employers in relation to the management of Orissa Mining Corporation and their workmen, which was received by the Central Government on 31-7-2007.

[No. L-29011/3/2004-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,

Presiding Officer, C.G.I.T.-cum-Labour-Court, Bhubaneswar.

Industrial Dispute Case No. 23/2004

Date of passing Award-17th July, 2007

BETWEEN

The Management of Managing Director,
M/s. Orissa Mining Corporation, OMC House,
Bhubaneswar-751,001, Orissa.

..... 1st Party-Management

AND

Their Workmen, represented through
The General Secretary, Orissa Mining Workers
Federation, C/o. OMC Ltd. OMC house,
Bhubaneswar.

....2nd Party-Union

APPEARANCES:

M/s. M. R. Mohanty, Advocate — For 1st Party-Management.

Shri A. K. Samal, General Secretary. — For 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (I) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-29011/3/2004-IR (M), dated 15-4-2004 :—

"Whether the action of the Management of M/s. Orissa Mining Corporation Ltd., in not paying equal pay for equal job and denying regularization to the workmen mentioned in Annuxure-A justified? If not to what relief the workmen are entitled?"

List of Workmen as per Annexure-A

1. Sri Sivaram Pallei.
2. Sri Pratap Kumar Sahoo.
3. Sri Ramesh Ch. Misra.
4. Sri Lalit Mohan Muduli.
5. Sri Chandramani Jena.
6. Sri Bulei Behera.
7. Sri Nimai Charan Khuntia.
8. Sri Akarana Behera.
9. Sri Jayakrushna Samantaray.
10. Sri Sanjaya Kumar Khandal.
11. Sri Duryodhan Sadangi.
12. Smt. Basanti Baliarsingh.
13. Sri Sadananda Barik.
14. Sri Susanta Behera.
15. Sri Uendra Kumar Dash.

2. After receipt of the above reference both the parties filed their Claim Statement and counter. While the matter was pending for settlement of issues the General Secretary of the Federation filed at first a petition on 16-4-2007 to drop the case. While this petition was pending for consideration the self same Secretary of the Federation filed on 5th July 2007 another petition enclosing thereto a minutes of discussion held between the Management and the Federation on 15-5-2007 and contended today the 17th July, 2007 to pass an award as per the terms of such settlement. On persual of Para-2 of the above settlement it is gathered that the Management having agreed to the demands of the Union has now decided to give non-permanent status to the DRMP workers like the disputants in question, whereby these worker group would be entitled to get 1/30th basic pay of a regular employee plus proportionate D. A. towards their daily remuneration. In view of the above settlement there remains nothing for the Tribunal to answer the reference.

3. Accordingly the reference is answered in terms of the above settlement of the parties.

N. K. R. MOHAPATRA, Presiding Officer

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. उड़ीसा माईनिंग कारपोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या आई.डी. सं. 25/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2007 को प्राप्त हुआ था ।

[सं. एल-29011/5/2004-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I. D. No. 25/2004) of the Central Government Industrial Tribunal Court Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Orissa Mining Corporation and their workman, which was received by the Central Government on 31-7-2007.

[No. L-29011/5/2004-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour-Court, Bhubaneswar.

Industrial Dispute Case No. 25/2004

Date of passing Award-17th July, 2007

BETWEEN

The Management of Managing Director,

M/s. Orissa Mining Corporation, OMC House,

Bhubaneswar-751,001 Orissa.

..... Ist Party-Management.

AND

Their Workmen, represented through

The General Secretary, Orissa Mining Workers Federation, C/o. OMC Ltd. OMC house,

Bhubaneswar.

....2nd Party-Union

APPEARANCE

M/s. M. R. Mohanty, Advocate : For 1st Party-Management.

Shri A. K. Samal, General Secretary. : For 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-29011/5/2004-IR (M), dated 29-4-2004 :—

"Whether the action of the Management of M/s. Orissa Mining Corporation Ltd., in not paying equal pay for equal job and denying regularization in service to the workmen mentioned in Annuxure-A justified? If not to what relief the workmen are entitled?"

List of Workmen as per Annesure-A

1. Sri Durga Prasad Nagi.
2. Sri Tankadar Bag.
3. Sri Dhaneswar Srichandan.

2. After receipt of the above reference both the parties filed their Claim Statement and counter. While the matter was pending for settlement of issues the General Secretary of the Federation filed at first a petition on 16-4-2007 to drop the case. While this petition was pending for consideration the self same Secretary of the Federation filed on 5th July 2007 another petition enclosing thereto a minutes of discussion held between the Management and the Federation on 15-5-2007 and contended today the 17th July, 2007 to pass an award as per the terms of such settlement. On persual of Para-2 of the above settlement it is gathered that the Management having agreed to the demands of the Union has now decided to give non-permanent status to the DRMP workers like the disputants in question, whereby these worker group would be entitled to get 1/30th basic pay of a regular employee plus proportionate D. A. towards their daily remuneration. In view of the above settlement there remains nothing for the Tribunal to answer the reference.

3. Accordingly the reference is asnwered in terms of the above settlement of the parties.

N. K. R. MOHAPATRA, Presiding Officer

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. उडीसा माईनिंग कारपोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या आई. डी. सं. 20/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2007 को प्राप्त हुआ था ।

[सं. एल-29011/9/2004-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I. D. No. 20/2004) of the Central Government Industrial Tribunal/Labour Court Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Orissa Mining Corporation and their workmen, which was received by the Central Government on 31-7-2007.

[No. L-29011/9/2004-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,

Presiding officer, C.G.I.T.-cum-Labour-Court, Bhubaneswar.

Industrial Dispute Case No. 20/2004

Date of passing Award-17th July, 2007

BETWEEN

1. The Management of Managing Director, M/s. Orissa Mining Corporation, OMC House, Bhubaneswar-751,001 Orissa.
2. The Manager (Mines), Bangur Chromite Mines of M/s. OMC Ltd., P.O. Dhanurajapur, Keonjhar.

.....1st Party-Managements.

AND

1. Their Workmen, represented through The General Secretary, Orissa Mining Workers Federation, C/o. OMC Ltd. OMC House, Bhubaneswar.

....2nd Party-Union

APPEARANCE

M/s. M. R. Mohanty, Advocate — For 1st Party-Management.

Shri A. K. Samal, General Secretary. — For 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-29011/9/2004-IR (M), dated 17-3-2004 :—

"Whether the action of the Management of M/s. Orissa Mining Corporation Ltd., in relation to their Bangur Chromite Mines at Keonjhar in not providing equal pay of equal work to the workmen (the details of whom are given in Annuxure-A subject to transfer to any other Mine & Prospecting Camp by the Management) incompatibility with their regular counterpart engaged in the Establishment and not regularizing them in the permanent posts of M/s. OMC considering their lengh of service being engaged in permanent/perennial nature of job, having conferred designation & independent handling of assigned task is legal and justified. If not to what relief the workman are entitled?"

List of Workmen as per Annexure-A

1. Sri J. K. Prusty.
2. Sri N. Parida.
3. Sri K. C. Maharana.
4. Sri K. K. Mallick.
5. Sri L. D. Das.
6. Sri B. C. Prusty.
7. Sri G. C. Parida.
8. Sri A. K. Parida.
9. Sri R. C. Sahoo.
10. Sri G. C. Sahoo.
11. Sri A. C. Peda.
12. Sri S. C. Jena.
13. Sri B. M. Sahoo.
14. Sri B. K. Peda.
15. Sri P. C. Parida.
16. J. N. Prusty.

2. After receipt of the above reference both the parties filed their Claim Statement and counter. While the matter was pending for settlement of issues the General Secretary of the Federation filed at first a petition on 16-4-2007 to drop the case. While this petition was pending for consideration the self same Secretary of the Federation filed on 5th July 2007 another petition enclosing thereto a minutes of discussion held between the Management and the Federation on 15-5-2007 and contended today the 17th July, 2007 to pass an award as per the terms of such settlement. On perusal of Para-2 of the above settlement it is gathered that the Management having agreed to the demands of the Union has now decided to give non-permanent status to the DRMP workers like the disputants in question, whereby these worker group would be entitled to get 1/30th basic pay of a regular employee plus proportionate D. A. towards their daily remuneration. In view of the above settlement there remains nothing for the Tribunal to answer the reference.

3. Accordingly the reference is answered in terms of the above settlement of the parties.

N. K. R. MOHAPATRA, Presiding Officer

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गोदावरीखनी के पंचाट (संदर्भ संख्या 19/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-22013/1/2007-आई आर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2005) of the Industrial Tribunal Industrial, Godavarikhani as shown in the Annexure in the Industrial Dispute between the management of SCCL and their workmen, received by the Central Government on 01-8-2007.

[No. L-22013/1/2007-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GODAVARIKHANI

PRESENT

Sri M. Shanmugam, B. Com., B.L., Chairman-cum-Presiding Officer

Saturday, the 23rd Day of December, 2006

Industrial Dispute No. 19/2005

BETWEEN

Karravula Rajaiah, S/o. Bakka Rajan,
Age 53 years, Occ: Ex-Employee of
M/s. S.C. Co. Ltd., R/o. H. No. 14-4-592,
Vittalnagar Locality of Ramagundam,
Nandal of Karimnagar District. ...Petitioner

AND

1. The Colliery Manager,
   GDK. No. SA Incline,
   M/s. S.C. Co. Ltd.., Godavarikhani
2. The General Manager,
   M/s. S.C. Co. Ltd.,
   Ramagundam Area-I, Godavarikhani ...Respondents

This Industiral Dispute petition coming on before me for final hearing on 11-12-2006, upon perusing all the documents on record and upon hearing argument of Sri D. Krishna Murthy, Advocate for the respondents. For the petitioner, he filed the petition. Afterwards, he was called absent, set-ex parte, he did not engage the counsel. As per Rule 24 of A.P., I.D. Rules if without sufficient cause, the petitioner fails to attend or to be represented before this court, it should be considered as if the party had duly attended or had been represented, and having stood over for consideration:—

AWARD

1. This is a petition filed U/Sec. 2-A(2) of I.D., Act, 1947 praying to set-aside the dismissel order dt. 14-10-2004 dismissing the petitioner w.e.f., 18-10-2004 and direct the respondent-company to reinstate the petitioner into service with continuity of service with all other a consequential attendant benefits including full back-wages in the interest of justice.

2. The petitioner affidavit allegations briefly are as follows :

The petitioner submits that the respondent-company appointed him as a causal worker in the year 1975. Subsequently, he was confirmed as a temponary Tunnel Mazdoor during the year, 1976. Ultimately, he was promoted as General Mazdoor in the year 1978. At the time of last day of working, the petitioner as a General Mazdoor, worked under respondent No. I, who is controlled by the respondent No. 2, who are hereinafter referred to as the respondent-company. Eversince his appointment, the petitioner discharged the entrusted duties to the utomst satisfaction of his superiors till the date of dismissal from his service vide letter dt. 14-10-2004, Uder the provisions of 25(25) of certified standing orders i.e., "absemteeism". The father of the petitioner also rendered his services to the respondent-company.

3. That the petitioner suffered from T. B., in the year 1984 and repeated the same in the year 2003 besides suffering from severe breathing problem and body weakness and with severe knee joint pains owing to which, the petitioner could not attend his duties regularly. That the petitioner was issued a charge sheet dt. 20-2-2004 by the respondent-company for absenting himself from his duties. Subsequently, enquiry proceedings were conducted on 5-5-2004, which followed enquiry report. A show cause notice dt. 4-7-2004 was issued, which followed a dismisal order dt. 14-10-2004 dismissing the petitioner without considering his genuine problems. The act of the respondent-company against the principles of natural justice.

4. That he explained his problems to the respondent-company for the allegations made in the charge sheet dated 20-2-2004. The respondent-company without paying any heed to the genuine problems of the petitioner for not attending his duties regularly, mechanically conducted enquiry proceding and submitted an enquiry report there to. That he submitted his representation dt. 21-7-2004 to the respondent-company about his suffering due to ill-health for which he took treatment provately and due to which he could not attend his duties. The respondent-company being inconsiderate of problems of the petitioner and without having any humanity, dismissed the petitioner from his service vide letter dt. 14-10-2004 w.e.f. 18-10-2004, under the provisions of 25 (25) of certified standing orders notwithstanding there is a sufficient cause as explained by the petitioner to the respondent-company.

5. The petitioner submits that the worked in the respondent-company for about 29 years without any adverse remarks. The petitioner was able to put 54 general musters during the year, 2003. The petitioner suffered severely from ill-health during the observation period of 3 months i.e., from 20-5-2004 to 19-8-2004. The petitioner took treatment during this observation. As such, the petitioner was compelled to for not attending his duties. The act of the petitioner is not intentional but accidential, which deserves to be condoned.

6. The domestic enquiry conducted by the respondent-managment was machancial. The evidence of the enquiry officer is biased, perverse, and disproportionate in view of not considering the genuine problems as put-forth by the petitioner. The above dismissal order passed without taking into consideration of genuine problems faced by the petitioner is against the principles of natural justice. The gross punishment thus inflicted on the petitioner by dismissing him from his service w.e.f., 18-10-2004, amouts to great injustice. The action of the respondent -Company per se was illegal and arbitrary.

7. That due to unjust dismissal from services by the respondent-company, the petitioner and his entire members of family are fallen on the roads, have been facing untold hardships and misery even for meeting the basic needs. The petitioner is a sole bread earner for his entire family and due to illegal dismissal from the service, he is forced to incur huge debits for maintenance of his family. The petitioner along with his members of family has been suffering from dire poverty and starvation. There is no other source of income for him execpt the job in the respondent-company.

8. Since the date of dismissal from service, the petitioner remained unemployed and could not secure any alternative employment elsewhere despite best efforts.

9. The petitioner did not file any other petition before this court. Under the circumstances supra, the act of punishment of dismissal from service of the petitioner by the respondent-company is highly shocking and disproportionate to the gruaity of alleged charge. Therefore prayed this court to set-aside the dismissal order dt. 14-10-2004 dismissing the petitioner w.e.f., 18-10-2004 and direct the respondent-company to reinstate the petitioner into service with continuity of service with all other consequential attendant benefits including full back-wages in the interest of justice.

10. The averments of the counter filed by the respondents are that it is a Govt. company incorporated under the provisions of Companies Act. 1956 for carrying out the business of winning and selling the coal. That since the coal mining industry is a central subject the appropriate Government for this respondent-management is Central Government. The respondent submits that as per Sec. 7A(i) of I.D., Act, the appropriate Government may by notification in the Official Gazette constitute one or more industrial Tribunals for the adjustication of Industrial dispute relating any matter whether specified in the 2nd schedule or 3rd schedule and for performing such other functions as may be assigned to them under this Act. That Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29-12-2000 for adjudication of industrial disputes and the petitioner ought to have approached the said Tribunal for the redressal of grievances, if any. But, the petitioner converiently avoided to file his petition before the Tribunal established by the Central Government for the reasons best known to him. It is admitted that the petition is not maintainable under law and the same may be dismissed on this graound alone.

11. That the maintainabilty of the dispute raised by the petitioner before this court may be decided as preliminary issue before proceedings with the trial.

12. That the petitioner failed to exaust the conciliation proceedings as laid down in the ID Act. and filed the present petition before this court under section 2-A(2) of I.D. Act., 1947 as amended by A. P., Amendment Act, 1987 (Act No. 32 of 1987). That as the appropriate Government for coal mining industry is the Central Government the State Amedment Act is not applicable to the respondent company and the petition filed by the petitioner is not maintainable under law and is liable to be dismissed in limine.

13. The respondent submits that in reply to para 1 of the petitioner, the petitioner was initially appointed on 7-3-1975 and later on was promoted as General Mazdoor at GDK. No. 5A Incline. He had put in only 54 of attendance during the year 2003 without leave or permission the petitioner was issued with a charge-sheet dt. 20-2-2004 under clause No. 25.25 of approved standing orders of the respondent-company for the misconduct of habitual absenteeism. The petitioner was suspended from 15-5-1985 to 24-5-85 earlier also for his misconduct under charge sheet dt. 6-6-84. That domestic enquiry under the charge-sheet dt. 20-2-2004 the services of the petitioner were terminated vide letter dt. 14-10-2004 after following the due procedure.

14. In reply to paras 2, 3 and 5 of the petition that as the petitioner had put in only 54 days of attendance during the year 2003 and remained absent for the remaining days without sanctioned leave or without permission, he was issued with a charge-sheet dt. 20-2-2004 under clause 25.25 of approved standing orders of the respondent-company for the misconduct of habitual absenteeism. The petitioner submitted his explanation dt. 25-2-2004 stating that due to ill-health he did not attend for duties and he would regularly attend to his duties in future and requested the respondent company to excuse him for this time. As the explanation is not satisfactory, domestic enquiry was ordered and conducted enquiry on 5-5-2004. The petitioner had fully participated in the domestic enquiry. During the enquiry he stated that he has no objection to record the proceedings of enquiry in English language and he did not want to take the assistance of any defence assistant and he adopted the charges levelled against him and pleaded guilty of misconduct. He did not also not choose to cross-examine the management witnesses during the domestic enquiry. During the domestic enquiry, he clearly stated that he did not receive any medical treatment during the absent period and did not obtain any prior permission from the mine authorities for absconding from his duties.

15. The respondent submits that during the domestic enquiry the petitioner had stated before the enquiry officer, among others due to ill-health he did not attend the duties in the year, 2003 and attended only 54 days and assured that he will improve his attendance by putting a minimum of 20 days of attendance and to excuse him for this time in view of his past 29 years of service. That in view of his statement and in view of his written undertaking dt. 19-5-2004, wherein he assured the respondent-company that he will attend for 20/22 days minimum per month from 1-6-2004 to 31-8-2004, his performance kept under observation. The petitioner to attend to his duties in June, 2004 inspite of his undertaking and as the charges framed against him are proved in the domestic enquiry.

16. That the petitioner did not attend for duties in the months of June, July and August, 2004 as per his undertaking dt. 19-5-2004 inspite of giving him sufficient opportunity to improve his attendance. That his attendance during the period from 2000 to 2004 is also not satisfactory.

S. No.	Year	Actual attendance
1.	2000	171
2.	2001	109
3.	2002	102
4.	2003	54
5.	2004 (upto Sept.)	9

That as the petitioner failed to improve his performance inspite of giving fair opportunity and as his past performance is also not satisfactory the respondent company is constrained to terminate the services of the petitioner vide order dt. 14-10-2004 w.e.f. 18-10-2004.

17. In reply to para 6 of the petition, that the respondent conducted the domestic enquiry duly following the procedure and the findings of enquiry officer are based on the statement of management witnesses recorded in the presence of the petitioner and the statement of the petitioner. With a view to give an opportunity, he was counselled by the respondent-company and the unions. After counselling, as per the undertaking dt. 19-5-2004 the petitioner was allowed to continue to work from 1-6-2004 to 31-8-2004. During the above observations period, he failed to attend for duties. The petitioner was given fair opportunity to defend his case during domestic enquiry. He was also given fair opportunity to prove his performance. During the three months observation period. As the petitioner failed to attend for his duties inspite of the above opportunity during the observation period his services are terminated after following the principles of natural justice.

18. That the respondent-company is doing the business of winning and selling of coal by employing more than 90,900 persons. That if the employees habitually abstain/abscond from their duties the required production/ planned production targets will not be achieved resulting in huge losses to the respondant-company. To avoid this contingency the respondent company incorporated the absenteoism in the acts of misconduct which is approved by the Central Government in accordance with the procedure laid down in the Industrial Employment (Standing Orders), Act. 1946. Therefore, the respondent, company prays this court to dismiss the petition in the ends of justice, else the respondent company suffers irreprable loss.

19. On behalf of the patitioner side, after filing of the claim statement, the petitioner did not choose to turn-up to the court. On the petitioner side, no documents are marked, no oral evidence and decisions filed into the court. On behalf of the respondent side also, no oral evidence, and no documents are marked and also no decisions are filed. Only oral arguments heard by the respondent side.

20. Heard as per Rule 24 of the I.D. Act on behalf of the petitioner and heard arguments on behalf of the respondent.

21. It is an admitted fact that the pettitioner was appointed as casual worker in the respondent-company in the year, 1975. Subsequently, he was promoted as General Mazdoor in the year, 1978. He was dismissed from his services vide letter dt. 14-10-2004 under the provisions of 25.25 of Certified Standing Orders i.e., absenteeism.

22. The claim statement allegations, the petitioner suffered from T. B., in the year, 1984 and repeated the same in the year, 2003 besides suffering from severe breathing problem and body weakness and with severe knee joint pains owing to which the petitioner could not attend his duties regularly. He took treatment privately due to which he could not attend to his duties. The absence of the petitioner is not intentional, but accidental which deserves to be condoned. The act of punishment of dismissal from service of the petitioner by respondent is highly shocking and dis-proportionate to the gravity of charges. Hence, he prayed the court to set-aside the dismissal order direct the respondent to reinstate the patitioner into service with continuity of service, with all other attendant benfits including back wages etc.

23. The respondents counsel argument was that the company is established under the Companies Act which is the Central Government. Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad for adiudication of Industrial Disputes. The petitioner filed this petition in this court is not maintainable under iaw and the same may be dismissed on that ground alone. The petitioner had put in only 54 days of attendance during the year 2003 without leave or permission. The petitioner was received with a charge sheet under clause No. 25.25 of Standing Order of the respondents-company for his mis-conduct of habitual absenteeism and the petitioner was suspended. The petitioner submitted his explanation standing that due to ill-health, he had not attended for his duties and requested the respondent-company to excuse him for this time. As the explanation is not satisfactory, a domestic enquiry was ordered and issued enquiry notice and conducted the enquiry. The petitioner attended the enquiry and participated in the domestic enquiry. The charge were explained to the petitioner and he has no objection to record the proceedings of enquiry in English language. He did not take the assistance of any defence

and he accepted the charges levelled against him and pleaded guilty of misconduct. He also not chooses to cross-examine the management witnesses during the domestic enquiry. In the domestic enquiry he clearly stated that he did not taken any medical treatment during absent period and did not obtain any prior permission from the mine authorities for absconding his duties. The petitioner did not produce any documents during the enquiry to show his illness during the charge sheeted period. The petitioner gave the writeen undertaking and assured the respondent that he will attend for 20 to 22 days minimum per month. On his undertaking, he was kept under observation, but the petitioner fail to attend his duties inspite of his undertaking given. Charges were framed against him and it was proved in the domestic enquiry. Respondent issued the show-cause notice by enclosing copies of enquiry report and enquiry proceedings. The petitioner gave the reply to the show cause notice As per the chart given in the counter, the attendance of the petitioner was not satisfactory. The petitioner failed to improve his performance in spite of giving fair opportunity and his past performance is also not satisfactory. Hence, the respondents company is constrained to dismiss the services of the petitioner. The petitioner concealing all the above facts filed this petition. Hence, pray this court to dismiss the petition in the ends of justice else the respondent company suffer from irreparable loss.

24. From the petitioner claim statement and on its perusal and also the arguments of the respondent counsel, though the petitioner pleaded the evidence of enquiry officer is biased, perverse and diaproportionate, in view of not considering the genuine problems as putforth by the petitioner. As per the above petitioner's pleadings preliminary is framed. For this, the respondent counsel argument was that as per the counter shown intable the absenteeism of the petitioner is habitual without obtained any prior permission from the authorities absconded from his duties. The petitioner also did not file any documents that he was ill-health and taken the treatment. The respondent followed the procedure of principles of natural justice by issuing the chargesheet by sending the notice of enquiry and he was also participated in the enquiry he admitted his guilt and he also given an undertaking stating that here after he will not absent to his duties. He was also given family counselling. Even then he was continued to absent. During the observation period also he failed to attend to his duties. He was also given fair opportunity to defend his case in the domestic enquiry. Even then the petitioner failed to attend for his duties. After issuing show-cause notice to the petitioner, the petitioner also gave the reply. The respondent was not satisfied with the reply given by the petitioner. The respondent followed the principles of natural justice. The respondent duly complied with all formalities and there was no room to say that there was any violation of principles of natural justice. The domestic enquiry conducted by the respondent is legal, proper, valid and binding on the parties.

25. From the respondents counsel argument the petitioner failed to report for duty and remained absent without obtaining leave, had acted in a manner in irresponsibility and unjustifiedly that on the findings of the enquiry officer, the charge was proved that the petitioner remained absent withput obtaining leave in advance. The respondent company has not resorted to extreme punishment at the very first instance of absenteeism of the petitioner-workman. The respondent company has tolerated him for quite some time and ultimately when there was no improvement in his behaviour to attend the duties, the respondent has no other ways except to dismiss the petitioner from the service.

26. As per the claim statement allegations, the contention of the petitioner that the punishment of dismissal of the petitioner from service of the company is totally disproportionate to the proved misconduct of authorised absenteeism of the petitioner. The disciplinary authority failed to advert itself to this aspect of the matter. I find it difficult to accept the submissions made by the petitioner in his claim statement. In this case, the petitioner admitted the un-authorised absenteeism in the enquiry proceedings. The petitioner also did not file any documents to prove that he was suffered from T.B. and no documents also produced to prove that he has taken treatment from the hospitals.

27. Before going to the merits of the case, I would like to submit the delay of the petition disposal, he filed the petition on 7-2-2005, it was numbered on 1-3-2005. Counter was filed on 27-6-2005. Since for a period of 6 months no vakalat is filed. On 24-7-2006, he was made set-exparte, as vakalat was not filed nearly for a period of one year 6 months. In this case, consent was inferred in the claim statement, there is no signature who verified the affidavit allegations.

28. The mis-conduct committed by the petitioner is un-authorised absence, as he did not obtain any prior permission from the main authorities for absconding from his duties is undoubtedly an irregularity and serious in nature. In the circumstances, this court cannot take any lenient view and substitute its opinion for that of the respondent. The findings of the respondent even on the question relating to the proportionality of punishment is based upon the evidence available on record. In this case, the petitioner did not turn-up to the court and he did not file any documents as he was suffered with ill-health and taken the treatment. The past record of the petitioner also shows his habitual absenteeism in attending to his duties.

29. In my considered opinion that the findings taken by the respondent does not suffer from any error whatsoever. Having regarding all the aspects and circumstances of the case, the punishment imposed by the management is not disproportionate requiring any interference in exercising the descrition U/Sec. 11-A of the I.D., Act. In these circumstances, I do not find any merit in this petition.

30. In my view this court would have no jurisdiction to show any sympathy for such a workman who is guilty of un-authorised absence should not be shown any leniency especially when he continues to absent himself and for a long period. The enquiry officer and the disciplinary authority both have considered all the facts and circumstances of the case and have correctly recorded their findings against the petitioner. I do not find any serious

illegality or any infirmity in the order of the respondent. Hence, I therefore dismiss the petition.

In the result, the petition is liable to be dismissed and is accordingly dismissed. But in the circumstances, no costs.

Typed to my dictation by Typist directly, corrected and pronounced by me in the open court on this, the 23rd day of December, 2006.

SRI SHANMUGAM, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses examined

For workman :—	For Management :—
—Nil—	—Nil

Exhibits

For workman :—	For Management :—
—Nil—	—Nil

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट (संदर्भ संख्या 18/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-22012/137/2003-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Dalurband Colliery, M/s. Eastern Coalfields Ltd., and their workmen, received by the Central Government on 01-8-2007.

[No. L-22012/137/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT

Sri Md. Sarfaraz Khan, Presiding Officer

Reference No. 18 of 2004

Parties :—

The Agent, Dalurband Collieriey of E.C.L., Pandaveshwar, Burdwan

Vrs.

The Chief General Secretary, Koyala Mazdoor Congress, Asansol, Burdwan.

Representatives :

For the management : Sri P.K. Das, Advocate

For the Union (workman): Sri. S.K. Pandey, General Secretary, Koyala Mazdoor Congress, Asansol

Industry : Coal STATE : West Bengal

Dated the 18-7-2007

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/137/2003-IR (CM-II) dated 25-2-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Dalurband Colliery under Pandaveshwar Area of M/s. ECL in dismissing Sri Lachman Bhuiya, U.G. Loader from service vide letter No. DC/589 dated 18/20-5-99 is legal and justified? If not to what relief he is entitled to ?"

After having received the Order No. L-22012/137/2003-IR (CM-II) dated 25-2-2004 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication a reference case No. 18 of 2004 was registered on 22-3-04 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Sri P.K. Das, Advocate and Sri S.K. Pandey, General Secretary of the union appeared in the Court to represent the management and the union respectively. The written statement on behalf of both the parties were filed in support of their respective claims.

2. In brief compass the case of the union as set forth in its written statement is that Sh. Lachman Bhuiya was the permanent employee of the Company as Under Ground Loader at Dalurband Colliery, Pandaveshwar Area of M/s. Eastern Coalfield Limited. The main case of the union is that he absented from his duty w.e.f. 18-12-98 and that due to sickness and being declared fit the workman reported to the management but he was not allowed to resume his duty. The workman was simply informed that his service have been terminated. It is also the case of the union that in spite of the fact that the workman kept informed to the managemnet about his sickness even then he was charge sheeted for alleged unauthorized absence from duty. The workman was not served with the copy of the charge sheet, notice of enquiry etc. as such the principles of natural justice was denied to him and the dismissal of the workman concerned from the service of the company is illegal and unjustified. A relief for his reinstatement in his service with all consequential benefits arising there from with effect from the date of his dismissal has been sought for.

3. On the other hand the defence case of the managemnet as per the averments of the pleadings in short is that Lachman Bhuiya of Dalurband Colliery had absented from his duties since 18-12-98 without any permission or even information to the competent authority. The further case of the management is that the workman concerned had not been very regular in attending his duties to inspire confidence of the management, for which the employer issued to him the charge sheet dated 8-1-99 for habitual absenteeism but Sh. Bhuiya did not give any reply to the said charge sheet. Subsequently an Enquiry Officer was appointed to conduct the domestic enquiry.

4. It is also the defence case of the management that three notices had been served fixing different date at regular interval to the home address of the workman but no response was received and ultimately ex-parte enquiry was conducted, so the enquiry proceeding should be deemed to be conducted in compliance of the natural justice. The enquiry officer is claimed to have hold the workman guilty for the charges established and on that account having considered the gravity of the charges and the misconduct the workman was dismissed from his service on 18-5-99. The management has claimed the dismissal order of the workman to be fare and proper and the workman is not entitled to any relief.

5. In view of the pleadings of both the parties and the materials available on the record I find certain facts which are admitted one. So before entering into the discussion of the merit of the case I would like to mention those facts which are directly or indirectly admitted by the parties.

6. It is the admitted fact that the delinquent employee Lachman Bhuiya was a permanent employee of the company working as Under Ground Loader at Dalurband Colliery under Pandaveshwar Area of M/s. Eastern Coalfields Limited.

7. It is the further admitted fact that the workman concerned was absent from his duty with effect from 18-12-98 to 8-1-99 without any leave, prior permission or information to the management. It is also admitted fact that the enquiry proceeding was conducted by a competent authority of the management in which the workman concerned had not appeared and participated in the enquiry proceeding and ultimately it was conducted ex-parte in which the workman concerned was held guilty for the charges levelled against him.

8. It is settled principles of law that the facts admitted need not be proved. Since all the aforesaid facts are admitted one so I do not think proper to discuss those facts in detail.

9. The record further goes to show that on 20-7-05 a hearing on the preliminary point of validity and fairness of the enquiry proceeding was made. Since the validity and fairness of the enquiry proceeding was not challenged and no invalidity or unfairness in the enquiry proceeding was found the same was held to be fair and proper and the case was fixed for final hearing on the merit of the case. The final hearing of the case was made on 11-8-05 and the award was kept reserved for order.

10. On perusal of the record it transpires that none of the parties has examined any oral witness in support of its case. The management has filed the Xerox copies of the charge sheet, enquiry proceedings along with its findings, the copy of the order of dismissal and the leave and sick register. These all documents are relevant and admitted one as the correctness or genuiness of these documents have not been challenged by the side of the union. On the other hand no chit of paper has been filed from the side of the union in support of its defence case.

From the perusal of the record and the enquiry proceedings and its report it is quite clear that the delinquent employee did not appear and participate in the enquiry proceeding. Three notices had been issued fixing different dates to the workman concerned at his home address but no response was made, ultimately ex-parte enquiry proceeding was conducted. The service of the notices will be deemed to be sufficient and satisfactory in the eye of law. Besides this the union has not challenged the validity and fairness of the enquiry proceeding which was held to be valid and fair. In such circumstance the union can not take the plea that he was denied the principles of natural justice.

12. It is further clear from the record that the charge sheet has been issued against the workman concerned for committing the misconduct of unathorized absence from duty without leave, prior permission and information to the management together with the charge of habitual absenteeism. The enquiry officer has categorically mentioned in his report that the delinquent employee was absenting since 18-12-98 to 7-4-99 without permission and information to the authority. He is further reported to be habitual absentee as per records, his attendance is 69 days in the year 1996, 50 days in the year 1997 and 20 days in the year 1998. It is also observed by the enquiry officer in its enquiry report that he is extreme callous towards his duty as apprant from the records. Finally the workman concerned has been opined to be guilty for both the charges.

13. Having gone through the entire facts, circumstances, enquiry proceedings and the findings of the enquiry officer I find that the delinquent employee was admittedly guilty for the charges levelled against him and the enquiry officer has rightly held him guilty for an unauthorized absence and habitual absenteeism under the provision of the Model Standing Order applicable to the establishment and in view of the aforesaid prevailing facts and circumstance of the case the workman concerned deserves suitable punishment for the alleged proven misconduct as provided in the Model Standing Order.

14. Now the only main point in issue for consideration before the court is to see as to how far the punishment awarded to the concerned workman by the management is just, proper and proportionate to the alleged nature of the proven misconduct.

15. Heard the learned lawyer for the management and the union representative in detail on the aforesaid points in issue.

16. It was submitted by the union that is a simple case of unauthorized absence and the absence from duty during the relevant period is duly explained and the reasons of absence from the duty is sickness which is relevant and satisfactory. It was also submitted that the delinquent employee has got unblemish record during the service tenure and it is the first offence of the workman concerned which has been sufficiently explained and the same go to show the compelling circumstance beyond the control of the workman concerned. It was also argued that a simple case of unauthorized absence can not be said to be a gross misconduct and the extreme penalty can not be imposed upon the workman in such a minor case of alleged misconduct.

On the other hand the learned lawyer for the management submitted that the findings of the enquiry officer are based on sufficient materials and documents including the evidence of the witnesses during the enquiry proceedings and the charges have been well established during the enquiry proceedings. It was further argued by the management's lawyer that it is not a simple case of unauthorized absence for few days without leave or prior permission and information to the management rather there is also the charge of habitual absenteeism. There is clear cut charge against the workman concerned about his habitual absenteeism as his total attendance for the last three year have been shown as under :—

1996	—	69 days
1997	—	50 days
1998	—	20 days

The aforesaid attendance sheets clearly go to prove the charges of habitual absenteeism. It was also submitted that the workman concerned has not even whispered a word in his written statement regarding the charge of habitual absenteeism. There is no defence at all in this regard. The learned lawyer for the management also draws the attention of the court towards the plea taken by the union about the reason of absence from duty, Simply sickness has been mentioned but from what type of disease he was suffering and from which doctor and where he was getting himself treated has not been pleaded. It was vehemently argued that no chit of paper by way of treatment paper or medical certificate of fitness has been produced in the court by the union in his defence and a lame excuse of the reason of sickness for absence from duty for a period of four months has been taken which can't be relied upon and taken into consideration. It is also submitted that the union has pleaded in its pleading that the workman concerned had informed to the management about his sickness but neither the mode or source of information has been mentioned or proved. I find much force in the argument of the lawyer for the management. Admittedly there is no medical certificate which is produced during the course of the period when he was absent to show that he was in fact suffering during that period from any such disease. In that view of the matter the so called justification has no basis whatsoever either on the ground that he was medically unfit. Accordingly the aforesaid ground of the union in respect of the compelling circumstance beyond the control of the workman concerned stands rejected. On perusal of the record it transpires that the concerned workman has been habitually remaining absent for which he was warned several times by the competent authority but in spite of the same he continued to be an habitual offender by continuously remaining absent. In the aforesaid light of the facts the awarding of the penalty of dismissal can not be levelled as disproportionate or shocking the conscience of the court. It has been several times observed by the Apex Court as well that the scope of interference to the punishment awarded by the disciplinary authority is very limited and unless the punishment is shockingly disproportionate the court can not interfere with the same and the employee having failed to show any mitigating circumstance in his favour the punishment awarded by the authority could not be characterized as disproportionate or shocking.

Having gone through the entire fact, circumstance, documents and the discussion made above I am satisfied to hold that the workman concerned was unauthorisedly absent from his duties for a long period continuously without any sanctioned leave, prior permission and information to the management together with the commission of the offence of habitual absenteeism deliberately without any sufficient reasons and with malafide intention amount to gross misconduct and the punishment of dismissal in the present fact and circumstance of the case can not be said to be disproportionate to the alleged proven misconduct. As such I am not inclined to interfere in the findings of the disciplinary authority of the management in passing the order of punishment and accordingly the punishment of dismissal is maintained and upheld. As such it is hereby

ORDERED

that let the "Reference" be and the same is dismissed on contest against the union as the delinquent employee is not entitled to get any relief sought for. Send the copies of the award to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. एम. पी. डी. आई. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 238/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2007 को प्राप्त हुआ था ।

[सं. एल-22012/137/1998-आई आर(सी-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 238/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial dispute between the employers in relation to the management of CMPDIL and their workmen, which was received by the Central Government on 31-7-2007.

[No. L-22012/137/1998-IR (C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Sri N. K. R. Mohapatra, Presiding Officer

C.G.I.T.-cum-Labour Court, Bhubaneswar

Tr. Industrial Dispute Case No. 238/2001

Date of Passing Award—29th June, 2007

BETWEEN

The Management of the Regional Director, C.M.P.D.L.I.. Sachivalaya Marg, Unit-III, Bhubaneswar-1 Orissa. ... 1st Party-Management

AND

Their Workmen, represented through the Secretary, Rashtriya Colliery Mazdoor Sangh, C.M.P.D.I.L. Branch, RI-VII, Bhubaneswar-1 ... 2nd Party-Union

APPREANCES

M/s. S. Mohanty, Advocate	—	For the 1st Party-Management
None	—	For the 2nd Party Union.

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/137/98/IR (CM-II), dated 22-03-1999.

> "Whether the action of the Management of CMPDIL in changing the weekly rest day from Sunday is justified? If not, what relief the workmen are entitled to?"

2. The short question raised by the Union in this reference is whether the Management can change the weekly rest day in respect of certain category of workers while others are allowed to avail the same on Sunday. It appears from the Claim Statement filed by the Union that all the workers including security guards of a drilling camp at Talcher of the Management were allowed since 1970 to avail Sunday as their weekly off day. While this practice was going on, the Management in August, 1996 changed the weekly day of rest from Sunday to different other days depending upon their shift duties (i.e. staggered rest day) in respect of Security personnels. On the intervention of the Union that order was withdrawn but again it was introduced from the next month (Sept., 1996) on wards. Contending that by such change the Security Guards were deprived of their double wages, which they would have otherwise earned on working in such Sundays, the Union raised the dispute before the Law Enforcing Authority resulting in the present reference.

2. The Management on the other hand has contended that neither under Mines Act or in any National Coal Wage Agreement or in any other law dealing with weekly off days there is nothing specific to declare Sundays as the common off days in respect of all employees. Allocation of shift duty to the workers and enforcement of security arrangement being part of administrative function, the Management is not bound under any law to declare exclusively all Sundays as the weekly off days in respect of all workers rendering its existence unsecured. It is further contended by the Management that under the Mines Act a person is required to work for 48 hours spread over a week with one paid-off-day in a week. Since for working on such off days the workmen are paid double the wages it makes no different whether the said off-day is a Sunday or some other day. In the above back -drop the Management has sought for an order declaring its action of prescribing different days as off days for the security guards was just and proper.

4. On the basis of above pleadings of the parties the following issues have been framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of C.M.P.D.I. in changing the weekly rest day from Sunday is justified?

3. To what relief the workmen are entitled?

5. One witness has been examined by each party besides relying on some documents.

ISSUE No. 1

6. This issue is answered affirmatively there being no substantial challenge to the same.

ISSUE No. II & III

7. These issues are interdependent and therefore taken up together.

It is the admitted case of both parties that "Sunday" was being availed as a weekly rest day by the security guards of Drilling Camps since about 1970. It is also admitted that when in August 1996 the Management wanted to change the weekly rest day to some other day other than Sunday it was objected by the Union for which it was kept in-abeyance. Again when one month later the Management introduced the same by prescribing different calendar days as the rest day, the Union came up heavily by raising an Industrial Dispute culminating the same in the present reference. In view of the above the disputants are as usually enjoying till date "Sunday" as their rest day.

8. With the above admitted facts it is pleaded by the Union that as per item 4 of the 4th Schedule of Industrial Disputes Act, such change in the "rest day" amounts to change in service condition and therefore the Management before making any such change should have issued prior notice as required under Section 9-A of the Act. It is further contended alternatively that if there was any doubt as to the proper interpretation of item 4 of 4th Schedule to the Industrial Disputes Act, the Management as per Clause 13.3.0 of Chapter XIII of the National Coal Wage Agreement (Ext.-17) should have seeked for the decision of J.B.C.C.I before bring such change. It is claimed that for non-observance of the above principle the impugned order is a nullity under law.

9. As regards the applicability of Clause 13.3.0 of Chapter XII of the National Coal Wage Agreement it may be made clear here that the said provision of referring a matter to the J.B.C.C.I would arise only when certain of the provisions of that Agreement needs clarification but not otherwise. Therefore the argument of the Union that before passing the impugned order effecting a change in the existing practice of availing "Sunday" as the weekly off day the Management should have referred the matter to J.B.C.C.I for it opinion and proper interpretation of item 4 of 4th Schedule'to I.D. Act falls to the ground.

10. Now as regards the other argument of the Union that the change made by the Management tantamounts to a change in service condition within the meaning of item 4 of 4th Schedule to Industrial Disputes Act, it may be pointed out that the concept of "weekly days of rest" as contemplated under Section 28 of the Mines Act is altogether different from the "hours of work and rest hours" as envisaged in item 4 of the 4th Schedule to the Industrial Disputes Act.

This being the position it is held that while making a change in the "rest day" it is not necessary on the part of the Management to issue advance notice as required under Section 9-A of the Industrial Disputes Act. Even if it is for-granted for a while that Section 9-A of the Industrial Disputes Act is attractable, the unchallenged evidence of the Management Witness shows that as a precautionary measure one such notice under section 9-A was infact given before enforcing its 2nd order (impugned order) dated 8-10-1996. Therefore, in any view of the matter the impugned order cannot be declared bad for non-compliance of the provisions of Section 9-A of the Industrial Disputes Act.

11. Now as regards the competency of the Management to prescribe different weekly days other than Sunday, a reference to the Mines Act reveals that the said Act is totally silent in prescribing a specified calendar day to be observed as weekly rest day. The said Act has also not prescribed "Sunday" to be observed as weekly rest day throughout the country irrespective of the nature of work of the working class. It has rather prescribed only that the total working hour in a week should not exceed 48 hours with one day complete break as weekly rest day. The National Coal Wage Agreement to which the Union has referred (Ext.-5, 6 and 16) are also not specific that all Sundays should be declared as weekly rest day. Nor it has prescribed that the weekly rest day must be uniformly observed on a particular calendar day through out. Nor it has prescribed about the incompetancy of a Management to change the off days once declared in any circumstances. Of course here and there some reference has been made to "Sunday" in the above noted exhibits. But as I find the said reference to the word "Sunday" has been made in a different context to draw a meaning that for working on such off days a worker would be entitled to get double the wages. It is well settled that an employer has the right to organize or to re-organize his business in any fashion he likes for the purpose of convenience or better administration for achieving economy, productivity or profitability subject however, to the limitation that in doing so he should not contravene any regulatory or other laws and acts bonafide. Therefore, in the above premises it cannot be said that the Management is incompetent to change the "Rest Day" once declared or enjoyed by the workers. Rather the only question to be. seen in above back -drop is as to where the Management by bringing such change has adversely effected the interest of the workers. In this context it has been claimed by the Union that when Sunday was a declared weekly off day, the disputant workmen belonging to Security Department were able to earn double the wage for working on such Sundays. But after the impugned order when each has been prescribed with a separate off day they are unable to earn such benefit for working on such Sundays, the same not being their rest day.

12. In answer to the above contention of the Union it may be clarified that it is never within the right of a workman to claim engagement on a weekly rest day. Rather it is purely within the managerial power of the Management to evolve a method as to who are to be engaged on such rest days or whether to engage or not to engage any such person on such days. But once a person is engaged on his rest day the Management is bound to pay him double the wages, be it a Sunday or some other day, as per Clause 11.4.1 of the National Coal Wage Agreement-III (Ext.-6). The above clause has made it clear that workers called upon to work on weekly-day-of rest of the colliery/ establishment shall be allowed twice the normal wages. This prescription "workers called upon to work on weekly rest-day" makes it further clear that as a matter of right one cannot claim to be engaged on a weekly off day. Therefore the claim of the Union that with the change of off day from Sunday to some other days these disputants are deprived of earning double the wages for working on Sundays does not appear to be logically correct. Therefore, it cannot be said that with the introduction of staggered off day system, these workmen belonging to the security department have been adversely affected. Accordingly for the various discussion made above it is held that the action of the Management in prescribing different off days to the disputants is above board and beyond reproach. It would however be bad if the Management refuses to pay double the wages towards their engagement on such off days.

13. Thus it is concluded that it is within the competency of the Management to prescribe different weekly rest days to the Security Guards in question and as such its impugned order stands valid. The Management should of course make it a point to pay double the wages to those of the disputants who are engaged on their scheduled rest day as per clause 11.4.1 of the National Coal Wage Agreement-III (Ext.- A/6).

14. Reference is answered accordingly.

N. K. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE WORKMAN

Workman Witness No. 1—Shri Prafulla Kumar Pradhan.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE MANAGEMENT

Management Witness No. 1—M. S. Khan.

LIST OF EXHIBITS ON BEHALF OF THE 2ND PARTY-WORKMAN

Ext.-1. — LetterNo. 503, dated 10-10-96.

Ext.-2. — Letter No. 615, dated 8/16-10-96.

Ext.-3. — J.B.C.C. I Chapter-I.

Ext.-4. — Chapter-XIII-Implementation of Agreement.

Ext.-5. — Chapter-XII-J.B.C.C.I.

Ext.-6. — Letter No. J.B.C.C.I/IR/94/Imp/986, dated 6-11-1980.

Ext.-7. — I.D. Act Page-41, 43.

Ext-8. — Sunday duty chart dated 3-12-1995.

Ext-9. — Sunday duty chart dated 7-1-1996.

Ext.-10. — Sunday duty chart dated 7-4-1996.

Ext.-11. — Sunday duty chart dated 28-4-1996.

Ext.-12. — Sunday duty chart dated 12-5-1996.

Ext.-13. — Letter No. RCMS/205/87/6546, dated 16-9-1987.

Ext.-14. — Office Order No. CMPDI/HR/SE/115/5892, dated 30-9-1989.

Ext-15. — J.B.C.C.I/IR/94/IMP 986 dated 6-11-1980-Annexure-A-10.

Ext.-16. — J.B.C.C.I. Chapter-XI-General 11.4—Wages for weekly day of rest.

Ext-17. — Copy of the agreement dated 23-12-2000 at New Delhi.

LIST OF EXHIBITS ON BEHALF OF THE 1ST PARTY-MANAGEMENT

Ext-A — Copy of letter dated 6-8-1992 from Officer-in-charge camp Kosala to Officer in charge (Admn.) CMPDIL

Ext.-A/1 — Copy of the letter dated 20/24-8-1992 from Officer-in-charge (Admn) to Camp-in-charge CMPDIL Camp, Kosala.

Ext-A/2 — Letter dated 1-10-1996 from Sr. Personnel Officer to G.M. (P&A), CMPDI.

Ext.-A/3. — Copy of the letter dated 18-10-1996 from Sr. Personnel Officer to G.M. (P & A), C.M.P.D.I.L.

Ext.-A/4. — Copy of letter dated 9-12-1996 of Shri K. R. Laxminarayan.

Ext.-A/5. — Copy of letter dated 22-11-96 of Regional Director, C.M.P.D.I.L. to General Manager (P & A), C.M.P.D.I.L.

Ext.-A/6. — Copy of Implementation Instruction No. 27, dated 25-04-1984.

Ext.-A/7. — Copy of letter dated 17-12-1996 of Dy. Personnel Manager, C.M.P.D.I.L.

Ext.-A/8. — Copy of letter dated 22-1-1997 of Regional Director, C.M.P.D.I.L.

Ext.-A/9. — Copy of letter dated 28-1-97 of Sr. Personnel Officer, C.M.P.D.I.L.

Ext.-A/10. — Copy of letter dated 16-10-1996 of Secretary, INTUC/RCMS Camp, Talcher.

Ext.-A/11 — Copy of the letter dated 22/23-11-1996 of Regional Director, CMPDIL to Asstt. Labour Commissioner.

Ext.-A/12. — Copy of the letter dated 27/28-11-1996 of Asstt. Labour Commissioner to Secretary to Government of India, Ministry of Labour.

Ext.-A/13. — Copy of letter dated 16-12-1996 issuing notice under section9-A of Industrial Disputes Act.

Ext.-A/14. — Copy of corrigendum dated 31-12-96 of officer-in-charge, CMPDIL, Talcher Camp.

Ext.-A/15. — Copy of letter dated 23-12-96 of RCMS (INTUC) to Officer-in-Charge, CMPDIL threatening to go to strike.

Ext.-A/16. — Copy of letter dated 27-12-1996 of RCMS to Officer-in-Charge, CMPDIL, Camp, Talcher.

Ext.-A/17. — Copy of letter dated 30-12-86 (90) of Secretary, RCMS to Asst. Labour Commissioner.

Ext.-A/18. — Copy of letter dated 9-1-1997 of Sr. Personnel Officer to Officer-in-Charge, CMPDIL, Drilling Camp, Talcher.

Ext.-A/19. — Copy of letter of Gupteswar Mishra and 7 others demanding extra wages.

Ext.-A/20. — Copy of letter dated 10-1-1997 ofUday Prakash to Regional Director, C.M.P.D.I.L.

Ext.-A/21. — Copy of Notice dated 16-12-1996 under Section 9-A of I.D. Act, 1947 with Annexures.

Ext.-A/22. — Copy of letter dated 27-12-1996 of RCMS to Officer-in-Charge CMPDIL, Talcher.

Ext.-A/23. — Copy of letter dated 23-11-1996 from Regional Director to Asstt. Labour Commissioner, Bhubaneswar.

Ext.-A/24. — Copy of letter dated 17-1-1997 from RCMS to Asstt. Labour Commissioner (Central).

Ext.-A/25. — Copy of letter dated 15-3-1997 from Regional Director to Assistant Labour Commissioner (Central), Bhubaneswar.

Ext.-A/26. — Copy of letter dated 24-2-1997 from Dy. Personnel Manager to Sr. Personnel Manager, CMPDIL.

Ext.-A/27. — Copy of letter dated 8-7-1997 from Secretary, R.C.M.S. to A.L.C (C).

Ext.-A/28. — Copy of letter dated 9-2-1998 from A.L.C.(C) to Secretary Govt. of India, intimating that the proceeding ended in failure.

Ext.-A/29. — Copy of letter dated 24-7-1997 from Regional Director, CMPDIL to A.L.C. (C) stating the stand of the Management.

Ext.-A/30. — Copy of Office Memorandum dated 28-5-1998 of Ministry of Labour.

Ext.-A/31. — Copy f letter dated 26-6-1998 of Government of India, Ministry of Coal to G.M. (IR) CMPDIL.

Ext.-A/32. — Copy ofletter dated 18-8-98 from Regional Director to Ministry of Coal.

Ext.-A/33. — Copy of letter dated 22/23-3-1999 from General Manager (P&A) to A.L.C. (C), Bhubaneswar.

Ext.-A/34. — Copy of order dated 22-3-1999 of Government of India Ministry of Labour referring the dispute for adjudication to Industrial Tribunal.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 92/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/535/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govemment hereby publishes the award (Ref. No. 92/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 1-8-2007.

[No. L-12012/535/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 92/2004

(Principal Labour Court CGID No. 269/99)

(In the matter of the dispute for adjudication under clause(d) of Sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Singaravelu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/535/98-IR (B-I) dated 22-4-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 269/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 92/2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri P. Singaravelu, wait list No.343 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tenkasi branch from 1-1-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tenkasi Main branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1-1-84, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tenkasi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale.

Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.343 in wait list of Zonal Office, Madurai So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category, (A) the temporary employees who were engaged for 240 days were to be considered and under category, (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category, (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 343 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/ Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 343 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in. the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V. A. of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1

deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' *casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in

accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement

entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in *the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead

of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NA THAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectiveiy." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no nght to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment

Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA VS. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the

appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *VS.* SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *VS.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *VS.* S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri P. Singaravedu
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri M. Perumal

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1
W3	24-01-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	03-07-85	Xerox copy of the service certificate issued by Tenkasi Branch.
W10	11-11-97	Xerox copy of the service certificate issued by Tenkasi Branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of subordinate care & service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai zoanl office For interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the call letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of Februiary, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 71/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/288/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Govemment on 1-8-2007.

[No. L-12012/288/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 71/2004

(Principal Labour Court CGID No. 143/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri C. Ramasamy : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Madurai.

APPEARANCE

For the Petitioner : Sri.V. S. Ekambaram, Authorised Representative.

For the Management : Mr. D. Mukundan, Advocate.

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/288/98-IR (B-I) dated 11-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 143/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 71/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri C. Ramasamy, wait list No. 282 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kalkulam branch from 16-07-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kalkulam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-7-84, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tuticorin branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and

he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 282 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category, (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 282 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 282 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concemed and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V. A. of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India, Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in " accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. Ml to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging Temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, hut that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the Bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his

appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/ Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri C. Ramasamy WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	14-08-96	Xerox copy of the service certificate issued by Kalkulam Branch.
W10	24-10-97	Xerox copy of the service certificate issued by Tuticorin main branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post-V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 73/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-08-2007 को प्राप्त हुआ था ।

[सं. एल-12012/416/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 01-08-2007.

[No. L-12012/416/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 73/2004

(Principal Labour Court CGID No. 148/99)

[In the matter of the dispute for adjudiation under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Murugesan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. D. Mukundan, Advocates.

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/416/98-IR (B-I) dated 11-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 148/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 73 /2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri P. Murugesan, wait list No. 330 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tirunelveli branch from 12-04-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tirunelveli branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 12-04-82, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tirunelveli branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 330 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 330 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank contjnuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 330 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on tempotary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concemed and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much

applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or

after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. Ml to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical

defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for

applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS

LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined: —

For the Petitioner	WW1 Sri P. Murugesan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service particulars of Petitioner issued by Tirunelveli branch.
W10	Nil	Xerox copy of the administrative guidelines in Reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W11	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 186/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-08-2007 को प्राप्त हुआ था ।

[सं. एल-12012/570/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 186/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 01-08-2007.

[No. L-12012/570/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 186/2004

(Principal Labour Court CGID No. 287/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri A. Tamodarane : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates.

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/570/98-IR (B-I) dated 26-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 287/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 186 /2004.

2. The Schedule mentioned in that order is as follows :

> "Whether the demand of the workman Shri A. Tamodarane wait list No. 249 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Pondy ADB branch from 20-12-1988. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Pondy ADB branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 20-12-1988, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tindivanam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 249 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 249 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

(i) "Whether the demand of the Petitioner in Wait. List No. 249 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA *Vs.* S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees in to 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, employing casuals to do messengerial work is in violation of the guidelines mentioned in Reference [illegible] of the affidavit, Copy of which is marked as Ex.W8. Besides the appointment of daily wage basis for regular messengers, sweepers etc. are strictly prohibited as per bank's circular instructions. In such circumstances, the consideration of casuals along with the eligible categories is illegal. Therefore, these persons who were engaged by the Respondent Bank on casual basis should not be given any permanent appointment in the bank service. Those casuals should be given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, the temporary employees have not been informed about this arrangement which includes casuals affecting their interest to a great extent. Further, as per instructions in Ex.W2 four types of wait lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when he was spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras High Court order is there, but he has not produced any document in support of the so called non-inclusion of his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION *Vs.* MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. *Vs.* INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS *Vs.* MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. *Vs.* PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. *Vs.* STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS *Vs.* INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN *Vs.* PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS *Vs.* K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. *Vs.* SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. *Vs.* PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA *Vs.* UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *Vs.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *Vs.* S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri A. Tamodarane WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T.L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	19-03-86	Xeros copy of the service certificate issued by Pondicherry ADB Branch.
W10	12-05-87	Xerox copy of the service certificate issued by Pondicherry ADB branch.
W11	11-01-98	Xerox copy of the service certificate issued by Pondicherry ADB branch.
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W13	Nil	Xerox copy of the Vol. III of reference book on Staff matters upto 31-12-95.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post-K. Subburaj.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post-J. Velmurugan.
W17	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W18	26-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
W19	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Cercle.
W21	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W22	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W23	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W24	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W25	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W26	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichu Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 128/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/280/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 128/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 1-8-2007.

[No. L-12012/280/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 128/2004

(Principal Labour Court CGID No. 119/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri G. Kandasamy : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. V. Sundar Anandan, Advocates.

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/280/98-IR (B-I) dated 9-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 119/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 128/2004.

2. The Schedule mentioned in that order is as follows:—

> "Whether the demand of the workman Shri G. Kandasamy, wait list No. 460 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karur branch from 2-7-1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 2-7-85, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Karur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 460 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 460 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

(i) "Whether the demand of the Petitioner in Wait List No. 460 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M 1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW 1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in " accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the. rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain–not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri G. Kandasamy WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference Book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xeros copy of the service certificate issued by Karur Branch.
W10	13-12-97	Xerox copy of the service certificate issued by Karur Siruthozhil branch.
W11	15-12-97	Xerox copy of the service certificate issued by Karur branch.
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.
W13	Nil	Xerox copy of the Reference Book on Staff matters Vol. III consolidated upto 31-12-95.
W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W16	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.
W17	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W18	26-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
W19	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Cercle.
W21	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W22	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W23	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W24	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W25	07-02-06	Xerox copy of the Local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W26	31-12-85	Xerox copy of the Local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 129/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/273/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 129/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 1-8-2007.

[No. L-12012/273/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 129/2004

(Principal Labour Court CGID No. 120/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri V. Sundaram : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. S. Sundar, Anandan, Advocates.

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/273/98-IR (B-I) dated 9-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 120/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 129/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri V. Sundaram wait list No. 451 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Musiri branch from September 1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Musiri branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. September, 1985 the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Musiri branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and

he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 451 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 451 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 451 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published In 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates' date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service latter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held "that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the. rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These

are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006s SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri T.L. Selvaraj WW2 Sri V.S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri V. Sundaram

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	1985 to97	Xerox copy of the service certificate issued by Musiri branch
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Responent/Bank regarding recruitment to subordinate cadre & service conditions.
W11	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post–K. Muralikannan
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post–V. Subburaj
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W19	13-2-92	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-0206	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ् इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 127/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/279/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 127/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 1-8-2007.

[No. L-12012/279/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 127/2004

(Principal Labour Court CGID No. 118/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Murugian : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : Mr. F. B. Benjamin George, Advocate.

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/279/98-IR (B-I) dated 9-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 118/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 127/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri M. Murugian, wait list No. 395 for restoring the wait list of temporary messengers in the establishment of State Bank of India and conse-quential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kattur ADB branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kattur ADB branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tennur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Resporident in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 355 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 355 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 395 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees, Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is prepqsterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concemed with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Responden are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW 1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the set tlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bon afide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These

are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain–not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri M. Murugaian WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	28-12-87	Xeros copy of the service certificate issued by Kattur ADB branch.
W10	15-06-88	Xerox copy of the service certificate issued by Kattur ADB branch.
W11	15-06-93	Xerox copy of the service certificate issued by Tiruchirappali Z.O. branch.
W12	28-06-94	Xerox copy of the service certificate issued by Tennur branch.
W13	15-06-95	Xerox copy of the service certificate issued by Tennur Branch.
W14	02-01-96	Xerox copy of the service certificate issued by Kattur ADB Branch.
W15	Nil	Xerox copy of the service certificate issued by Tennur Branch.
W16	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W17	Nil	Xerox copy of the reference book on Staff matters Vol. III upto 31-12-95.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan.
W19	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W20	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W21	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W22	26-03-97	Xerox copy of the letter advising selection of part time Menial —G. Pandi.
W23	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W24	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W25	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W26	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W28	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W29	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W30	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Trichy in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 133/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/423/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 1-8-2007.

[No. L-12012/423/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 133/2004

[Principal Labour Court CGID No. 131/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. Sankapillai : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I,
Trichirapalli.

APPEARANCES

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates.

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/423/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 131/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 133/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri S. Sankapillai wait list No. 358 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kattur ADB branch from 10-12-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kattur ADB branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 10-12-84, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kattur ADB branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period, While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc., to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 358 in wait list of Zonal Office, Trichy. So far 272 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 358 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 358 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees, Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil), of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner thai Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not Inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH *Vs.* RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service latter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION *Vs.* INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. *Vs.* SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH *Vs.* UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS *Vs.* STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. *Vs.* STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA *Vs.* UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *Vs.* SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *Vs.* S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined: —

For the Petitioner	WW1 Sri S. Sangapillai
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	24-11-87	Xeros copy of the service certificate issued by Kattur ADB Branch.
W10	10-08-93	Xerox copy of the service certificate issued by Tiruchirappalli branch.
W11	19-10-95	Xerox copy of the service certificate issued by Trichy branch.
W12	20-02-98	Xerox copy of the service certificate issued by Kattur ADB branch.
W13	05-06-98	Xerox copy of the service certificate issued by Trichy Town branch.
W14	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W15	Nil	Xerox copy of the reference book on Staff matters Vol. III consolidated upto 31-12-95.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-K. Subburaj.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-J. Velmurugan.
W19	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W20	26-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
W21	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W22	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W23	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W24	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W25	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W26	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W27	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W28	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 126/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/278/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 126/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 01-8-2007.

[No. L-12012/278/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 126/2004

(Principal Labour Court CGID No. 117/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. Sekar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I,
Trichirapalli

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : Mr. F. B. Benjamin George, Advocate.

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/278/98-IR (B-I) dated 9-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 117/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 126/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri R. Sekar, wait list No. 602 for restoring the wait list of temporary messengers in the establishment of State Bank of India and conse-quential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thuvakkudi Industrial Estate branch from November, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Ootacamurd Industrial Estate branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 9-6-84, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tiruchirappalli Z.O. branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office

from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 602 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 602 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 602 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in. 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates' date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M-1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in " accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level Fettlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the. rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject. matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain–not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri R. Sekar WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	18-08-88	Xerox copy of the service certificate issued by Tiruchirappalli Branch.
W10	16-06-93	Xerox copy of the service certificate issued by Tiruchirappalli Branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W12	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post —J. Valmurugan.
W16	17-3-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 16/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/291/1998-आईआर(बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 1-8-2007.

[No. L-12012/291/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 16/2004

(Principal Labour Court CGID No. 17/99)

[In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Philipraj : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Zonal Office Coimbatore. : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates.

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/291/98-IR (B-I) dated 1-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 17/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-Cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 16/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri R. Philipraj, wait list No. 367 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ootacamund branch from 5-2-1985. During 1985-86. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Ootacamund branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 5-2-85, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working as such another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working at Ootacamund branch, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the

office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 367 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 367 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged.

It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

(i) "Whether the demand of the Petitioner in Wait List No. 367 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA *Vs.* S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject- matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor; workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D.Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri R. Philipraj WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	8-8-896	Xerox copy of the service certificate issued by Udagamandalam Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W11	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Murlikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J.Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G.Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Cercle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 93/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/567/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 93/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 01-8-2007.

[No. L-12012/567/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 93/2004

[Principal Labour Court CGID No. 285/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. Karuppiah : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. Veeramani, Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/567/98-IR (B-I) dated 23-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 285/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 93/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri S. Karuppiah, wait list No. 320 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Rameshwaram branch from 24-10-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Rameshwaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 24-10-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Rameshwaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4--97. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 320 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 320 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 320 for restoring the wait list of temporary messengers. In the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M.10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concemed with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India." Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 vertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties

continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. Ml to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act; and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that *"now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had*

entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. *"So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity."* Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that *"they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."* He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that *"Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors."* Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *"merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right."* Further, it has also held that *"it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a personwho has temporarily or casually got employed should be directed to be continued permenently. By doing so, it will be creating another mode of public appointment which is not permissible."* Further, the Supreme court while laying donw the law, has clearly held that *"unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right onthe appointee. ..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be*

entitled to be absorbed in regular service or made permanent merely onthe strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that *"regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise."* Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that *"it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law."* Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that *"only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service."* The Supreme Court also held that *"the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."*

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri S. Karuppiah
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri M. Perumal

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the cirrular of Respondent/ Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.
W9	22-10-96	Xerox copy of the service certificate issued by Rameshwaram Branch.
W10	April' 95 to July, 97	Xerox copy of the service certificate issued by Rameshwaram Branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Repondent/Bank regarding recruitment to subordinate cadre and service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol. III of consolidated up to 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulaers–J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appontment order to Sri G. Pandi.
W19	Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary emplyees for the panel of wait list)
W21	09-11-92	Xerox copy of Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of Norms–creation of part time gereral attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the Local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 94/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/641/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 01-8-2007.

[No. L-12012/641/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 94/2004

[Principal Labour Court CGID No. 305/99]

[In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri C. Repathi : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Madurai.

APPEARANCES

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. Veeramani, Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/641/98-IR (B-I) dated 03-05-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 305/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 94/2004.

2. The Schedule mentioned in that order is as follows :—

> "Whether the demand of the workman Shri C. Repathi, wait list No. 371 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kurumbur branch from 01-06-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV, temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kurumbur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-06-1983, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Kurumbur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure,

the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 371 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 371 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per

settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 371 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees, Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go'or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in.'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave

vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross- examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/ Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *"the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act; and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that *"now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had*

entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. *"So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity."* Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that *"they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."* He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that *"Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors."* Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *"merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right."* Further, it has also held that *"it is not as if, the personwho accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a positionto bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a personwho has temporarily or casually got employed should be directed to be continued parmanently. By doing so, it will be creating another mode of public appointment which is not permissible."* Further, the Supreme Court while laying down the law, has clearly held that *"unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right onthe appointee. ..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment,*

he would not be entitled to be absorbed in regular service or made permanent merely onthe strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that *"regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise."* Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that *"it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law."* Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that *"only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service."* The Supreme Court also held that *"the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."*

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri C. Repathi
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri M. Perumal

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the cirrular of Respondent/ Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.
W9	01-03-88	Xerox copy of the service particulars of Petitioner issued by Kurumbur Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Repondent/Bank regarding recruitment to subordinate care and service conditions.
W11	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulaers–J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary emplyees for the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms–creation of part time gereral attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 1 अगस्त, 2007

का.आ. 2412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 134/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2007 को प्राप्त हुआ था ।

[सं. एल-12012/421/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st August, 2007

S.O. 2412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 134/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 1-8-2007.

[No. L-12012/421/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 134/2004

[Principal Labour Court CGID No. 132/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Jagadeesan : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Trichirapalli. : II Party/Management

APPEARANCES

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/421/98-IR (B-I) dated 11-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 132/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 134/2004.

2. The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri A. Jagadeesan, wait list No. 329 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kattur ADB branch from 04-12-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kattur ADB branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 4-12-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Tennur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-

employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 329 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 329 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 329 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees, Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary

employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *"the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and

are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act; and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide*

the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that *"now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a*

vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. *"So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity."* Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that *"they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."* He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that *"Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors."* Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *"merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right."* Further, it has also held that *"it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."* Further, The Supreme Court while laying down the law, has clearly held that *"unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. ..... It*

has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that *"regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise."* Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that *"it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law."* Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that *"only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service."* The Supreme Court also held that *"the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed herein before."*

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a *bonafide* in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K, JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri A. Jagadeesab
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri T. L. Selvaraj

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circulars of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-02-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.
W9	27-02-87	Xerox copy of the service certificate issued by Kattur ADB Branch.
W10	13-07-88	Xerox copy of the service certificate issued by Kattur ADB Branch.
W11	24-09-94	Xerox copy of the service certificate issued by Lalgudi Branch.
W12	11-06-96	Xerox copy of the service certificate issued by Lalgudi Branch.
W13	11-06-96	Xerox copy of the service certificate issued by Tennur Branch.
W14	02-04-97	Xerox copy of the service certificate issued by Tennur Branch.
W15	04-04-97	Xerox copy of the service certificate issued by Lalgudi Branch.
W16	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service contitions.
W17	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W19	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger
W20	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W21	17-03-97	Xerox copy of the service particulaers–J. Velmurugan.
W22	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W23	31-03-97	Xerox copy of the appontment order to Sri G. Pandi.
W24	Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W25	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary emplyees for the panel of wait list.
W26	09-11-92	Xerox copy of Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W28	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms–creation of part time gereral attendants.
W29	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W30	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 3 अगस्त, 2007

का.आ. 2413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, एरिया स्टेशन कैण्टीन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, नं.-II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/96 ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-8-2007 को प्राप्त हुआ था ।

[सं. एल-14011/2/2001-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 3rd August, 2007

S.O. 2413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/96 of 2001) of the Central Government, Industrial Tribunal-cum-Labour Court, No. II Mumbai as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Area Station Canteen and their workmen, which was received by the Central Government on 3-8-2007.

[No. L-14011/2/2001-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

A. A. Lad, Presiding Officer

REFERENCE NO. CGIT-2/96 OF 2001

Employers in relation to the Management of Area Canteen

The Vice Chairman
Area Canteen
Mumbai-Sub-Area
Colaba
Mumbai-400 005

AND

Their Workmen

The General Secretary
General Labour Union
C/o. Greaves Cotton Employees Union
503, Doh-Bin-Shir, 5th Floor
69/71, Janma Bhoomi Marg,
Mumbai-400 001.

APPEARANCES

For the Employer : Mr. P.K. Raveendranathan, Advocate.

For the Workmen : Mr. M.B. Anchan, Advocate.

Mumbai, 6th July, 2007

AWARD

Matrix of the facts as culled out from the reference are as under :—

1. The Government of India, Ministry of Labour by its order No. L-14011/2/2001 [IR (DU)] dated 21-06-2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :—

> "Whether the action of the management of Area Station Canteen in not accepting the 15 point Charter of Demands dated 29-9-2000 served by the General Labour Union and in terminating the employment of seven workmen (as per annexure) with effect from 28-10-2000 is legal and justified? If not, what felief the workmen concerned are entitled to ?"

List of 7 workmen as per annexure

1. Shri Ahire Suresh B.
2. Shri Rajendran
3. Shri Bansilal B. Ahire
4. Smt. Aruna Shinde
5. Shri Prakash Chandrapal
6. Shir Pravin D. Detke
7. Shri M. K. Garud

2. Claim statement at Ex-7 is filed by the General Secretary of the Union which is contested by the first party by submitting written statement at Ex-8. Accordingly, my Predecessor framed issues at Ex-11. Treating issue No. 1 as preliminary issue, Part-I Award was passed on 25-04-2006 observing reference maintainable before this Tribunal and directed both parties to appear to lead evidence. Said observation was disputed by first party by filing Ex-34 raising same point of jurisdiction which was decided by passing Part-I award. In that light Ex-34 was disposed of observing first party cannot repeatedly raise same issue of jurisdiction instead of challenging the Part-I award. Accordingly first party challenged Part-1 award and order passed in Ex-34 by filing Writ Petition No. 812 of 2007. While disposing of said Writ Petition, Hon'ble Bombay High Court observed, this Tribunal has no jurisdiction and question involved in the reference should be referred to 'Central Administrative Tribunal' Mumbai to decide it on merits. Said is intimated by the Union by application Ex-36 along with the copy of the order of the Bombay High Court passed in Writ Petition No. 812 of 2007 where Hon'ble High Court directed this Tribunal to transfer this reference to Central Administrative Tribunal, Mumbai. Hence the order :

ORDER

1. In view of order passed by Hon'ble Bombay High Court in Writ Petition No. 812 of 2007 annexed with application Ex-36, reference is disposed of.

2. Secretary of this Tribunal is directed to send record and proceeding of this proceeding to Central Administrative Tribunal, Mumbai for further adjudication.

Dated : 06-07-2007 A.A. LAD, Presiding Officer

GENERAL LABOUR UNION

Regd. No. 5023

C/o. Greaves Cotton Employees' Union, 503, Dol-Bin-Shir, 5th Floor, 69/71, Janmabhoomi Marg, Mumbai-400 001.

Khandelwal Bhuvan, 166, Dadabhai Navaroji Road, Mumbai-400 001.

Ref. : GLU/GEN/03/2007 Dated : 21-06-2007

The Registrar, CGIT,
Shram Raksha Bhavan,
Shivsrusti Road,
Sion,
Mumbai : 400 022.

Sir,

Sub : Ref No. CGIT-2/96 of 2001 & Bombay High Court WP No. 812/07.

This is to inform you that by its order dt. 11-6-2007 the Honourable Bombay High Court was pleased to direct transfer of pending reference to Central Administrative Tribunal, Mumbai. Authenticated copy of order dt. 1-6-2007 enclosed herewith.

You are requested to transfer the record and proceedings of Ref. No. CGIT-2/96 of 2001 to CAT, Mumbai at the earliest as the same is directed to be decided within a period of one year.

Thanking you,

Yours faithfully,

(S. MUTHU VEERAPPAN)
General Secretary

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION
NO. 812 OF 2007

Vice Chairman of
Area Canteen, Mumbai Sub-Area,
Colaba, Mumbai. ....Petitioner

V/s

Their Workmen represented by
the General Labour Union
and Anr. ....Respondents

Mr. M.M. Verma with Mr. Rajesh Gehani for the petitioner.

Mr. Sandeep Dadwal i/b Mr. Prakash Mahadik for Respondent No. 1.

CORAM : V. M. KANADE, J.

Date : 11th June, 2007

P. C.

1 Rule.

2. Rule is made Returnable forthwith. Respondents waive service.

3. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of the Respondents.

4. The grievance of the Petitioner is that the Central Government Industrial Tribunal does not have jurisdiction to decide the claims of the Respondents-employees in view of the judgment of the Apex Court in the case of Union of India Vs. M. Aslam and other reported in AIR 2001 SC 526. The Tribunal was pleased to pass Part-I Award and came to the conclusion that the Tribunal had jurisdiction to entertain the reference which was made by the Central Government. Thereafter, the Petitioner again filed a review application in the said reference and submitted that in view of the said judgment of the Supreme Court, the reference should be sent back to the Central Government since the Tribunal did not have jurisdiction to entertain the reference. The Presiding Officer, Industrial Court, however, rejected the said application and held that the Petitioner had not challenged the Part-I Award by filing Writ Petition in this Court and therefore, it was not open for the Petitioner herein to file second application after Part-I Award was also declared by the Tribunal.

5. The learned Counsel appearing on behalf of the Petitioner submits that in the case of M. Aslam (supra), it has been categorically held by the Apex Court in respect of the Unit-Run Canteens that Unit-Run Canteens are part of Canteen Stores Department in Defence Services and that the Central Administrative Tribunal has jurisdiction to decide the claims filed by such employees. The learned Counsel submitted that the Part-I Award was passed though this judgment was, in fact, referred to by the Respondents herein and that the Tribunal has failed to take into consideration the ratio of this judgment. He, however, candidly admitted that in the Written Statement which was filed by the Petitioner herein it was averred that the Petitioner has no connection with the Government of India and is also not under the control and supervision of the Government of India and that the Petitioner being the separate entity should not be equated with the employees of the Central Government. He submitted that, however, in view of the judgment of the Supreme Court in the case of M. Aslam (supra), irrespective of the averments made by the Petitioner in the Written Statement, the Tribunal was

not competent to consider the claim or reference made by the Respondents.

6. The learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that when the Part-I Award was passed, the Judgment in the case of M. Aslam (supra) was not even referred to by the Petitioner herein. He submitted that therefore it was not open for the Petitioner to now contend that the Tribunal did not have jurisdiction to entertain the reference.

7. I have perused the Part-I Award passed by the Trubunal as also the order passed on the application which has been taken out by the Petitioner herein. On the perusal of the Award, it can be seen that there is no discussion and no reference has been made to the judgment of the Supreme Court in the case of M. Aslam (supra). The Tribunal was under an obligation to consider the ratio of the Judgment of the Supreme Court particularly when it deals specifically on this aspect regarding maintainability of dispute raised by the employees of the Unit-Run canteens. It is a well settled position in law that jurisdiction to decide a particular matter cannot be conferred on the authority even by the consent of parties. It is further well settled that question of inherent lack of jurisdiction can be raised at any stage. In my view, therefore, the Tribunal has clearly committed an error of law which is apparent on the face of record in not considering the ratio of the judgment of the Apex Court in the said M. Aslam's case (supra). The Supreme Court in the said judgment in para 3 has observed as under :—

"3.....

.....

Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-Run Canteens can be held to be not Government Servants, when it has emerged that providing canteen facilities to the Defence service personnel is obligatory on the part of the Government and in fact these Unit-Run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. Mr. Goswami, the learned senior counsel appearing for the Union of India Strongly relied upon the judgment of this Court in Union of India Vs. Chotelal (1999) 1 SCC 554 : (1999 AIR SCW 29 : AIR 1999 SC 376 : 1999 Lab IC 428), wherein the question for consideration was whether Dhobis appointed to wash the clothes of cadets at NDA at Khadakwasla who are being paid from the regimental fund could be treated as holders of civil post within the Ministry of Defence. This Court answered in the negative because the regimental fund was held not to be a public fund as defined in paragraph 802 of Defence Services Regulation. Payment to such Dhobis out of the regimental fund and the character of that regimental fund was the determinative factor but in the case in hand if the Canteen Stores Department forms a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it is the said Canteen Stores Department which provides fund as well as different article through the retail outlets of Unit-Run Canteens then the employees who discharge the duties of salesmen in such retail outlets must be held to be employees under the Government. The officers of the Defence Services have all pervasive control over the Unit-Run Canteens as well as the employees serving therein. Regular set of Rules have been framed determining the service conditions of the employees in Unit-Run Canteens. The funding of articles are provided by Canteen Stores Department which itself is a part of the Ministry of Defence. The report of a Committee of Subordinate Legislation went into detail the working conditions of the employees engaged in the Unit-Run Canteens and categorically came to the conclusion that these employees are recruited, controlled and supervised be the Rules and Regulations made by the Defence Services although these have been given the name of executive instructions. The said Committee came to the conclusion that for all intent and purposes the employees in the Unit-Run Canteens are Government employees and should be treated as such. In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit-Run Canteens must be held to be that of a Government employee and consequently the Central Administrative Tribunal would have the jurisdiction to entertain the applications by such employees under the provisions of the Administrative Tribunals Act. Civil Appeal Nos. 1039-1040 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Branch in O.A. No. 86 of 1995 accordingly stand dismissed."

The judgment of the Supreme Court is binding on all Courts in view of the provisions of Article 141 of the Constitution of India. The ratio of the judgment in the case of M. Aslam (supra) is squarely applicable to the facts of the present case. Thus, in view thereof, the Part-I Award as also the order passed on the subsequent application at Exhibit-34 by the Presiding Officer dated 28-11-2006 are both quashed and set aside.

8. Since the reference is pending before the Tribunal since last more than six years, in the interest of justice, it would be appropriate if the Central Government Tribunal is directed to transfer the reference to the Central Administrative Tribunal. The Central Administrative Tribunal, on receipt of the reference shall decide the said reference on merits without raising the issue of limitation as expeditiously as possible and, in any case, within a

period of one year. Rule is made absolute in the above terms. Under the circumstances, there shall be no order as to costs.

V. M. KANADE, J.

नई दिल्ली, 3 अगस्त, 2007

का.आ. 2414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, एम. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या-2/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-8-2007 को प्राप्त हुआ था ।

[सं. एल-22012/48/2001-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd August, 2007

S.O. 2414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2002) of the Central Government, Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Ib Valkley Area, Mahanadi Coalfields Ltd., and their workmen, received by the Central Government on 3-8-2007.

[No. L-22012/48/2001-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra, Presiding Officer

CGIT-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 2/2002

Date of Passing Award-13th July, 2007

BETWEEN

The Management of the Project Officer,
Bharatpur Colliery of MCL,
At/P.O. South Balanda,
Dist. Angul,
Orissa. .....1st Party-Management

AND

Their Workman,
represented through
The General Secretary,
Bharatpur Colliery Labour Union,
At/P.O. South Balanda,
Dist. Angul,
Orissa-759 116. .....2nd Party-Union.

APPEARANCES

Shri B. Mallick, Personnel Manager.	: For the 1st Party-Management.
Shri Anil Palo	: For himself the 2nd Party-Workman.

AWARD

1. The Government of India, Ministry of Labour, in exercise of powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) have referred the following dispute for adjudication *vide* their Order No. L-22012/48/2001/IR (CM-II), dated 24-12-2001.

> "Whether the action of the Project Officer, Bharatpur Colliery of M.C.L. in terminating the services of Shri Anil Palo, who was under medical treatment and not allowing him to join duty after his recovery is legal and justified? If not, to what relief he is entitled to ?"

2. The shortly case of the disputant as narrated in the Claim Statement is as follows:—

The disputant was a Crane Operator, Grade-III in Bharatpur Open Cast Mines of the Management-Company. On 7-4-1992 he was declared as sick by the Central Colony Dispensary of the 1st Party-Management company and on 3-8-1992 he was referred to the Psychiatric Department of S.C.B. Medical College, Cuttack, by the orders of Medical Superintendent of Regional Hospital at Talcher of the company. It is alleged by the workman that while undergoing treatment in S.C.B. Medical College as an out-door patient he made a train journey to Berhampur on 7-2-93 to receive his pension as an Ex-Military person. On that day he lost all his documents including the papers relating to his treatment in S.C.B. Medical College. Therefore after receipt of a letter from the Management to join in duty forthwith he sent a reply on 21-5-1993 (Ext.-3) intimating that he would join in duty after the treatment in S.C.B. Medical College is over. The workman further alleges that despite his above reply the Management proceeded to frame charges against him on 19-5-1993 (Ext.-4) and on 24-7-93 he was asked by the Project Officer, Bharatpur Colliery to join in duty. Even though he replied to the same stating to have lost all his documents in a train journey and that he would join in duty after his treatment the Colliery Manager again sent another letter dated 4-8-93 asking him to join in duty forthwith. In the meantime the Enquiry Officer also sent intimation of the enquiry date and proceeded with the enquiry without providing sufficient opportunity to him. The Management also framed an additional charge on 8-4-1994 (Ext.-8) for his alleged refusal to receive a letter. While this being the situation, the workman alleges, when he wanted to join in duty on 14-8-1998 with the medical fitness certificate etc. he was refused employment on that day and on 29-4-1999 he was terminated from service on the basis of an ex parte

report of the enquiry officer. Narrating the above background it is claimed by the workman that when he was sick during the entire period he should have been allowed to join when he reported himself with a medical fitness certificate on 14-8-1998.

Charges framed against the Workman.

Charge-sheet dated 19-5-1993 (Ext.-4)

xxx xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx xxx

"As reported and got confirmed by the undersigned that though you have taken sick at Bharatpur Dispensary, you are not coming daily for your treatment to Dispensary. This action on your part clearly shows that you are not actually on sick and remaining absent from your duty unauthorizedly. To this effect, you were issued with a letter No. PO(B)/Sick/93/7681-92, dated 7-5-93, wherein you were advised to join your duty immediately. Though you have received the said letter on 11-5-93, till date you have not joined to your duty.

xxx xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx xxx

Charge sheet dated 8-4-1994 (Ext.-8)

xxx xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx xxx

"In your application dated 31.7.1993 you have mentioned that you have lost the medical treatment papers and would submit them soon. Though many months have elapsed, you have not submitted such papers till now. From the records of Bharatpur Dispensary and that of company Regional Hospital, Talcher as well, it has been confirmed that you are neither under treatment at the company dispensary and Regional Hospital nor there is any records regarding your treatment in any other hospital. This clearly shows you are absenting unauthorizedly since long. And also you are advised to join your duty immediately vide letter No. 120(B)/ Contd.&/ Contd. Disc/94/4505-94, dated 26-3-94 which was refused to receive by you. This is also one of the serious misconduct by which your services are governed."

xxx xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx xxx

3. Referring to the above charges and the various stands taken by the workman it is contended by the Management in its written statement that after the workman was referred to the S.C.B. Medical College on 3-8-1992 for better treatment he neither kept the Management informed of his treatment nor did he apply for medical leave or join in his duty for which the management being in dark about his whereabouts charge sheeted him ultimately on 19-5-1993 (Ext.-4) asking him thereunder to submit his explanation and to join forthwith. After the above charge sheet the workman in his letter dated 21-5-1993 (Ext.-3) simply intimated that, he would join in duty after being discharged by the S.C.B. Medical College, Cuttack. In response to another letter dated 24-7-1993 of the Project Officer, Bharatpur Colliery the workman in his letter dated 31-7-93 (Ext.-5) intimated to have lost all his documents including the medical papers of the S.C.B. Medical College while making a train journey to Berhampur. Along with his said letter he also filed an affidavit and a copy of police report to justify loss of his documents. In his said letter he also undertook to produce the medical reports (sick certificate) after completion of his treatment. But ultimately when he wanted to join in duty on 14-8-1998 he produced some other fitness certificate obtained from a Doctor of Berhampur in regard to a different type of disease other than the disease for which he was referred to the S.C.B. Medical College, Cuttack. Therefore, in these circumstances the Management had no other alternative but to refuse him to join.

4. On the basis of above pleadings of the parties the following issues were framed :

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Project Officer, Bharatpur Colliery of MCL in terminating the services of Shri Anil Palo, who was under medical treatment and not allowing him to join duty after his recovery is legal and justified?
3. If not, to what relief the workman is entitled?

Addltional Issue

4. Whether the findings of the domestic enquiry intimated against the workman by the Management is fare and proper?

5. The workman having examined himself as the sole witness has also produced several letters issued to him and the reply sent thereto.

The Management on the other hand has examined one of its officers but has not marked any document though produced.

ISSUE NO. 1

6. This issue is answered affirmatively since not challenged during trial.

ISSUE NOS. 2 & 3

7. These issues are taken up jointly as they are interdependent. Admittedly the workman was referred to the Psychiatric department of S.C.B. Medical for his

neurosis treatment on 3-8-1992 vide Ext.-l and later for not keeping the Management hospital informed of his treatment and for remaining absent from duty without any leave application he was charge-sheeted and terminated ultimately on 29-4-1999 vide order Ext.-18. From the terms of reference it is clear that the above order of termination is not under challenge though of course evidence has been adduced from both side in regard to the question of propriety and legality of the domestic enquiry. Basing on a plea of the workman that during pendency of enquiry proceeding he was not allowed to join on 14-9-1998, the present reference has been made for adjudication of the above action of the Management. In these circumstances it would be futile and unnecessary on my part to examine in detail the propriety and legality of the domestic enquiry. Therefore, I like to devote my entire exercise to the dispute that forms alone part of the reference.

8. The various correspondence exchanged between the parties show that after being referred to the S.C.B. Medical College, Cuttack on 3-8-1992 the workman remained totally in-different towards the employer by not intimating about his treatment. He also did not think of applying for medical leave for about 9 months for which the Management in its letter dated 7-5-1993 addressed in his disclosed address asked him to join in duties as also to submit his explanation. Having received no response the Management in his another letter dated 19-5-1993 (Ext-G) asked him to answer the charges contained therein and to join in duty forthwith. In reply to the above the workman by presenting personally his reply dated 21-5-1993 (Ext-3) at the colliery office wanted to shut the mouth of the management contending that he should not be asked to explain as his conduct of remaining absent was not at all in violation of Standing Order 26(30). There he also intimated that he would join after his treatment in S.C.B. Medical College is over. Thereafter, in response to another letter dated 24-7-1993 of the Management he gave another letter personally in the colliery office on 31-7-1993 (Ext. 5) stating that he would submit his sick certificate later on as all his papers and driving license etc. were stolen while going in a Train to Berhampur to draw his pension (Military Service Pension) on 21-7-1993. But as no such documents could be filed over a period of 8 months the Management again sent another letter dated 26-3-1994 (Ext 7) requiring him to join in duty and on his failure to do so sent another letter on 26-3-2004 and on the refusal of the workman to receive the same sent another letter dated 8-4-1994 (Ext-8) framing additional charges with an advise to join in duty forthwith and then proceeded with the departmental enquiry having received no response or leave application from the workman, treating him to have abandoned the job.

9. From the above it appears that after being referred to the S.C.B. Medical College when the workman neither applied for leave nor intimated the authority about his treatment for months together, the Management had to issue him notices after notice each time asking him to join in duty with his explanation. From the above discussion it is also evident that even though he had gone personally to the colliery office to give his reply dated 21-5-1993 (Ext-3) and 31-7-1993 (Ext-5) he never intended to join in his duties nor did he send any application for leave during the entire period from 3-8-1992 till the departmental proceeding was commensurated in June 1994. During trial the workman has filed a good numbers of documents and correspondence exchanged with the management but there is nothing to show that on a solitary occasion he had applied for medical leave. When questioned about the same during trial he rather conceded indirectly to have had never applied for any leave at any point of time. The evidence of the Management witness shows that for the above reason the workman could not be treated as on sick leave. Rather he was taken to have had abandoned the job. It is the settled principle that when a person is referred to a hospital for his better treatment it does not mean that he would be at his will to move to some other hospital without taking medical leave or stop intimating his authority regarding the progress of his treatment. In his evidence the workman has deposed that he used to attend the S.C.B. Medical College each time by going from Talcher (his place of posting). He further states that after the treatment was over he was issued with a discharge certificate by the above hospital. But as in the mean time he suffered from some sexual disease he had to approach the Coal India Hospital (Management's hospital) and by producing the Medical Book wanted to be treated for the said disease. But the doctor concerned had refused to entertain him. If this evidence of the workman is believed, it would suggest that by the time he approached the above hospital he was well in possession of the discharge certificate granted by the S.C.B. Medical College which he could have filed before undergoing treatment for some other diseases. In his evidence the workman has deposed that while undergoing treatment in S.C.B. Medical College he not only lost all his documents in a train journey to Berhampur but also suffered from sexual diseases. He has further deposed that for treatment of his said sexual disease he once approached the Coal India Hospital (Management Hospital) but he was not entertained by the concerned doctors for which he had to remain for some time under the treatment of M.K.C.G. Medical College at Berhampur and finally got cured from a Naval Hospital at Vizag. He further states that after being discharged from the said Naval hospital he came to join in duty on 14-8-1998 but he was not permitted to join. He also admits that during such period he had never applied for medical leave nor he was referred to M.K.C.G. Medical College at Berhampur or to the Naval hospital at Vizag. The evidence of the Management witness shows on the other

hand that when the workman came to join in duty on 14-8-1998 he had simply produced the medical fitness certificate granted by an authority other than S.C.B. Medical College to which he was referred to. Besides the fitness certificate produced by the workman was in relation to some other disease for which he was never referred and therefore he could not be allowed to join when he reported to duty on 14-8-1998 with these documents. Therefore in these circumstances when the workman admits to have had spent all his time from 3-8-1992 to 14-8-1998 without applying for leave and as according to his own averment the fitness certificate with which he had approached to join on 14-8-1998 was not in respect of the disease for which he was referred to S.C.B. Medical College. I find that there was sufficient justification for the Management in not allowing him to join in duty on 14-8-1998.

ISSUE NO. IV

10. For the discussion made in the concluding lines of Para-7 and the propriety of the domestic enquiry not being within the parameter of the reference, this issue is left unanswered.

FINDINGS

11. In view of the discussion made above and the findings given under Issue No.2 and 3 it is held that the action of the Management is not allowing the workman to join on 14-8-1998 is far beyond reproach.The reference is answered accordingly with no relief to the workman.

N.K.R. MOHAPATRA, Presiding Officer

LIST OF WITNESSES EXAMINED ON BEHALF OF THE WORKMAN

Workman Witness No. 1—Shri Anil Palo, the workman himself.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE MANAGEMENT

Management Witness No. 1—Shri A. S. Ram Seshayya.

LIST OF EXHIBTS ON BEHALF OF THE 2nd PARTY-WORKMAN

Ext.-1 — Copy of the letter No. 2643-47, dated 3-8-1992 of Medical Superintendent, Regional Hospital, Talcher.

Ext.-2 — Copy of the letter No. MCL/3418, dated 15-9-1992 of Medical Superintendent, MSL, Sambalpur.

Ext.-3 — Copy of Explanation dated 21-5-1993.

Ext.-4 — Copy of the letter No. 3411-15, dated 19-5-1993 of MCL, Bharatpur, Balanda.

Ext.-5 — Copy of the letter No. Nil, dated 31-7- 1993 of Anil Palo.

Ext.-6 — Copy of F.I.R.

Ext.-7 — Copy of the letter No. 4586-99, dated 26-3-1994 of Manager, Bharatpur Project, Balanda.

Ext.-8 — Copy of the letter No. 8228-33 dated 8-4-1994 of Manager, Bharatpur Projects Balanda.

Ext.-9 — Copy of intimation letter dated 25-7-1994.

Ext.-10— Copy of application dated 26-10-1994 of Anil Palo.

Ext.-11— Copy of intimation letter dated 14-5-1996 of Anil Palo.

Ext.-12— Copy of Enquiry Report.

Ext.-13— Copy of letter No. 24 dated 5-7-1996 of Manager, Bharatpur Project, Balanda.

Ext.-14— Copy of intimation letter dated 11-9-1997.

Ext.-15— Copy of intimation letter dated 11-11-1998.

Ext.-16— Copy of the reminder dated 21-11-1998.

Ext.-17— Copy of reminder letter dated 18-12-1998.

Ext.-18— Copy of the order of termination dated 29-4-1999.

Ext.-19— Copy of appeal dated 24-5-1999.

Ext.-20— Copy of letter No. 11812/19, dated 16-6-1999 of Project Officer, Bharatpur Project.

Ext.-21— Copy of representation dated 8-7-1999 of Anil Palo.

LIST OF EXHIBITS ON BEHALF OF TH E 1st PARTY-MANAGEMENT

No documents have been exhibited on behalf of the 1st Party-Management.

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसूर मिनरल लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 08/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2007 को प्राप्त हुआ था ।

[सं. एल-29011/17/94-आईआर(एम.)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 6th August, 2007

S.O. 2415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/1997) of the Central Government, Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mysore Minerals Ltd. and their workman, which was received by the Central Government on 6-8-2007.

[No. L-29011/17/94-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE TIE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

Dated: 20th July, 2007

PRESENT

SHRI A. R. SIDDIQUI, Presiding Officer

C. R. No. 08/1997

I PARTY	II PARTY
Shri H.M. Gangappa & Smt. G. Vanajakshmma, C/o Murudra Naik, Bellur Post, Ripponpet, Via Hosanagar Taluk, Shimoga District, Kamataka State.	The Chairman & Managing Director, Mysore Minerals Ltd. 39, Mahatma Gandhi Road, Bangalore - 560 001

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-29011/17/94 IR (Misc) dated 16th December, 1994 for adjudication on the following schedule:

SCHEDULE

"Whether the management of Mysore Minerals is justified in terminating the services of Shri H.M. Gangappa and Smt. G. Vanajakshamma w.e.f. 02-05-1993? If not, to what relief they are entitled to and from which date?"

2. The first party is husband and wife. The case made out, in the claim statement, by them is that they have been working in the mines belonging to the second Party since 1988; that initially, they were working at Beemasamudra Mines in Chitradurga District. Consequent to closure of this mine, they were sent to work at Asooli Mines near Dandeli at Karwar district. They have worked from 09-02-1990 to 10-06-1992 continuously; that they have been transferred again to Harnahalli Manganese Mines where they have continuously worked from 10-06-1992 till their services were terminated w.e.f. 10-05-1993, pursuant to display of a Memo No. MML/HMN/PER/93-94/270 dated 08-05-1993 on the Notice Board. Their main contentions are that their services were terminated without any reason and also without giving any notice, hence, the same is liable to be set aside; that their termination order is unjust and illegal. Therefore, both of them are entitled to continue in service and they have no other avocation; that have also issued a legal notice after an oral request. Since, their termination is in gross violation of law they are entitled for reinstatement to their original posts with full backwages and continuity of service.

3. The Second party/management by way of their Counter Statement have not disputed the fact of the first party working in the mines belonging to the management at Beemasamudra and Asooli. However, the management contended that they were engaged purely on casual and temporary basis during the years 1988 and 1989 for exploration and prospecting work and soon after the completion of the said work services of the first party workmen were discontinued w.e.f. 30-07-1989. The management contended that thereafter the first party some how managed in seeking employment as casual mazdoors afresh, at Asuli Manganese Mine w.e.f. 09-02-1990 and they had been recruited by the Mine Manager concerned without any authority as there was total ban on making any sort of recruitment in the company at the time as per the directions issued by the Govt. of Karnataka. Therefore, since the recruitment of the first party workmen were made by the Mine Manager illegally, their services were terminated from the company w.e.f. 10-05-1993, as soon as, their illegal appointment was brought to the notice of the management. However, in order to comply with the requirements under law, the first party workmen were treated as on duty from 10-05-1993 to 09-11-1993 and were paid full wages for this period. They were also paid retrenchment compensation as per the act and one month's wages in lieu of notice as per the ID Act, 1947. Payments were made to the first party in November 1983 (it ought to have been 1993) through cheques and they were received by the first party workmen under due acknowledgements. Therefore, the management requested this tribunal to reject the reference.

4. During the course of trial, the management examined one witness as MW1 by name Shri M. Narayana said to be the office superintendent and got marked documents at EX.M1 to M6. His statement in examination chief relevant for the purpose is that after the work of exploration and prospecting was completed at Beemasamudra mines the first party workmen who worked during the period 1988-89 were asked not to attend the work during July 1989. He says that on 03-12-1990 the first party workmen were once again appointed to work at Asuli Mines and they were

recruited by the Mines Manager without the knowledge of the head office and without there being any authority for appointment. He says that during 1990 the Govt. issued a Ban for employment in the mines and the fact of appointment of the first party workmen came to the knowledge of the management during the year 1993 and therefore, on 05-05-1993 the Managing Director gave a notice to terminate the services of the first party workmen and accordingly, their services were terminated. He says that since they learnt that the termination amounts to retrenchment they have sent a letter dated 09-11-1993 treating their termination as retrenchment and paid full wages from 10-05-1993 to 09-11-1993 along with the compensation and wages in lieu of one month's notice. He then referred to the aforesaid six documents namely, the statement of attendance of Gangappa at Ex.M1, Statement of attendance of his wife at Ex.M2, the notice issued to the first party workman, Shri Gangappa at Ex.M3 , the notice issued to his wife at Ex.M4 and the notices issued to the first party workmen intimating them about the retrenchment compensation as per Ex.M5 & M6.

5. The first party workman, Shri Gangappa examined himself as WW1 repeating the various averments made in the Claim Statement and got marked four documents in his examination chief at Ex.W1 to W4 namely, the wages slip, statement showing the contribution of his wife towards employees PF, contribution towards PF made by himself and the report of ALC(Central) as a result of the conciliation.

6. It is based on the aforesaid oral and documentary evidence, my learned predecessor after having heard the learned counsels representing the parties, by his award dated 02-06-1999 allowed the reference with a direction to the management to reinstate the first party workmen in service with full back wages, continuity of service, posting them to a mine nearby place to Shimoga District. It is aggrieved by this award the management approached the Hon'ble High court in Writ Petition No. 34001/1999 and his Lordship of Hon'ble High Court by order dated 08-06-2005 remanded the matter back to this tribunal for fresh disposal in the light of the observations made therein. The relevant observations made by their Lordship at Para 4 read as under :—

> " I have read the impugned award. Before finding out whether Section 25F is attracted to the facts of this case, the appointment of the respondents should have been validly made. Merely because the respondents were transferred from one place to another the appointment which was made illegally would not get validated as held by the labour court. Whether the respondents were appointed prior to the date of the circular or subsequent to the date of the circular the labour court has not recorded any finding. Though the labour court raised specific issue it has failed to properly appreciate the said issue and record a finding thereof. The finding recorded on that issue is contrary to law and cannot be countenanced. In view of the fact that both parties have adduced evidence, issues have been framed and when the court has not applied its mind in a proper prospective and this court has been denied the benefit of the said appreciation of the evidence on this aspect, it is appropriate to set aside the award passed by the labour court and send it back to the labour court for fresh consideration in accordance with law in the light of the observations made above and after going through the material which is already on record. In view of the matter I pass the following Order :"

7. After the remand, once again, the management examined a witness by name Shri Basavarajappa said to be working as a law officer by filing his affidavit and his affidavit averments at Paras 2 &3 relevant for the purpose read as under :—

> "I further submit that Mysore Minerals Limited is a Karnataka Govt. Undertaking. The Govt. of Karnataka has banned appointments of casual workers/daily rated workers in the Govt. departments and its Public Undertaking with effect from 1st July 1984 vide OM No. DPAR 10 SLC 83 dated 3rd July 1984. The said fact has been reiterated again in G.O.No.DPAR 2 SLC 90, Bangalore dated 6th August 1990. The respondents were appointed as Casual mazdoors/casual labourers by the Mine Manager during the year 1989. During this period the state Government has banned appointment of casual mazdoors/casual labourers in all its departments and public undertakings. As on the date of appointment respondents, the Mines Manger had not authority to appoint them as daily labourers.
>
> I have produced herewith GO NO.DPAR 2 SLC 90, Bangalore dated 6th August 1990 passed by the Govt. of Karnataka and Circular dated 9th May, 1990 issued by the Secretary to Govt., Department of Personnel & Administrative Reforms, Govt. of Karnataka".

8. During the course of cross examination of this witness the first party got marked as many as 12 documents as Ex.W7 to W18. The first party examined himself as WW1 by filing his affidavit once again and in his further examination chief he got marked Xerox copies of 3 notifications at Ex.W19. The other documents filed by the first party vide list dated 24-7-1999 have been marked at Ex.W20 series. I would like to consider the statements of the management witnesses as well as the statement of the first party made on both the occasions in their cross examination and the documents produced by them during

my discussion hereinafter as and when found relevant and necessary.

9. Learned counsel for the first party (both the workmen) vehemently argued that they joined the employment of the management as mine workers in the year 1988 at Beemasamudra mines and on its closure w.e. f. 30-07-1989 they were sent to work at Asuli mines in Karwar district where they worked from 09-02-1990 to 10-06-1992. On the closure of mines at Asuli they were transferred to Harnahalli Manganese mines where they have worked from 10-06-1992 till their services were terminated w.e.f. 10-05-1993. In order to substantiate his arguments learned counsel took support of the various documents produced by him to which I would like to come a little later. Therefore, learned counsel submitted that the first party workmen had rendered continuous service of more than 4 years and when they were about to complete service of 5 years, a condition to be fulfilled to make them permanent, they have been illegally removed from service. He contended that when the first party have worked for a period of 240 days and more continuously in each of the calendar year during the aforesaid period, their termination perse was illegal and in violation of the provisions of the I.D. Act, tantamounting to retrenchment as defined under Section 2(oo) of the I.D. Act and since there was no proper compliance of Section 25 F of the ID Act, they are entitled to reinstatement in service with all consequential benefits. To meet the contention that the appointment of the first party was not legal being done by the concerned mines manager without any authority and therefore, there was no need for compliance of Section 25F or that there was compliance of the said provision after a gap of about more than six months from the date of removal, learned counsel submitted that first of all the manager was competent under the mines rules 1955 to make appointments of casual labourers and even if it was not so the termination could not have been done without the compliance of Section 25F of the ID Act. His contention was that the alleged retrenchment of the first party workmen as contended by the management was not inaccordance with the provisions of Section 25F of the ID Act as first party workmen were removed from service in the month of May 1993 and it is in the month of November 1993 they sent retrenchment compensation amount, notices etc. Learned counsel , also argued on the point that the first party workmen were the regular employees being given benefits of provident fund scheme, leave encashment benefits and a prescribed pay scale. He submitted that just to overcome rather to defeat the claim of the first party workmen to make them permanent in service in case they completed 5 years of service, they have been removed from service before they could complete the said tenure of service. Learned counsel, also submitted that when the termination is held to be bad in law, the workman would be entitled to full back wages and other consequential benefits. In support of his arguments learned counsel relied upon the following 7 rulings:

1. 2006(4) SCC 1
2. 2007(2) SCC 112
3. 2006(6) SCC 310
4. 2004(1) SCC 43 = AIR 2004 SC 977
5. 2004 AIR SC 4348
6. 1979 AIR SC 75= 1979(2) SCC 80
7. AIR 2007 SC 1370

10. Whereas, learned counsel for the management submitted his written arguments, almost, repeating the various contentions taken by the management in its counter statement. His main contention was that the first party workmen though worked as a casual mazdoors at Beemsamudra mines between 1988 and 1989, their services were discontinued from 20-07-1989 and thereafter they somehow managed to seek employment afresh at Asuli mines on 03-12-1990 and their appointment by the Manager of the mines concerned was without any authority. He contended that when they came to know about the illegal appointment, under the instructions of the head office they terminated the services of the first party w.e.f. 10-05-1993 and thereafter their services were retrenched w.e.f. 09-11-1993 treating them as on duty from 10.05.1993 to 9.11.1993. In his arguments he did not dispute the fact of first party working in the management company in the year 1988 to July 1989 but disputed the claim of the first party workmen that they worked at Asuli Mines between August 1989 to November 1990. He also did not dispute the fact that the first party workmen have worked with the Asuli mines from December 1990 up till their services were terminated. Therefore, his main contention was that appointment of the first party being illegal, in the first instance, there was no illegal termination amounting to retrenchment. Even otherwise the management to be on safer side complied with the compliance of Section 25F of the ID Act by sending compensation amount and retrenchment notices to the first party workmen in the month of November 1993 and therefore, the reference must fail.

11. Now therefore, in the light of the reference points, the aforesaid pleadings of the parties, the evidence and also the arguments advanced for the respective parties, the points which fall consideration of this tribunal would be —

(i) "Whether the first party workmen worked continuously for a period of 240 days and more with the management mines between the year 1988 and 1993 as claimed by them,

(ii) If so, whether the act of the management in terminating their services amounts to retrenchment,

(iii) If so, whether the management complied with the provisions of Section 25F of the ID Act, while terminating or retrenching the services of the first party workmen. If not, what relief the first party workmen are entitled".

Point No. 1 :

11. In order to appreciate the respective contentions of the parties on this point and having regard to the evidence brought on record in the first instance let us examine the question as to whether the first party workmen worked with the management mines right from the year 1988 up till the date they were removed from service. As noted above, as per the case of the first party made out in the claim statement and as per the evidence of WW1 he and his wife first joined the services of the management as mine workers at Beemsamudra Mines in the year 1988 and when that mines came to be closed on 30-07-1989 they were sent to Asuli Mines and there they worked from 09-02-1990 to 10-06-1992 and thereafter at Haranahalli Manganese mines from 10-06-1992 to 10-05-1993. The contention of the first party workmen that they have worked from August 1989 till 09-02-1990 at Asuli mines which has been denied by the management has not been substantiated by them by any documentary evidence produced and relied upon by them. Infact, in the claim statement itself they have not disclosed as to where actually they were working between August 1989 and Feburary 1990. The documents which are relied upon by the first party workmen in this context namely, Ex.W1 is pertaining to the year 1989, i.e for the period undisputed. The documents at Ex.W2 &W3 are the PF payment slips in respect of both the workmen for the year 1991 & 1992 again for an undisputed period. The various payment slips produced by the first party workmen i.e. 31 pay slips in favour of Shri Gangappa and 29 pay slips in favour of his wife beginning from December 1990 onwards uptill they were removed from service. Therefore, these are again the pay slips in favour of the first party workmen for the period of service not disputed by the management. They have therefore, not produced before this tribunal any documents to suggest or prove that between August 1989 and February 1990 they were working at Asuli Mines. The fact that they have worked with the management between the year 1990 till their services were terminated in the month of May 1993 infact, as noted above, has not been disputed by the management. It is again not the contention of the management that between this period there was any break in service of the first party workmen and therefore, it can safely be assumed and taken proved that the first party workmen were in continuous service of 240 days and more with the management mines during the aforesaid period. Accordingly, the first point is answered in favour of the first party workmen.

Point No. 2 :

12. The stand of the management to justify the termination as the retrenchment done legally is to failed. In the evidence of MW1 examined before this tribunal, his testimony in his examination chief was to the effect that after the first party workmen stopped attending the work since July 1989 on the closure of Beemasamudra mines they were appointed to work at Asuli Mines near Dandeli once again on 03-12-1990. He stated that during the year 1990, there was a ban on employing any workman in the bank and that workmen were appointed by the mines manager without any authority and therefore, under the instructions of the head office their services were terminated. Whereas, MW2 who filed his affidavit before this tribunal after the remand, comes with a version that there was a ban for appointment of casual workers w.e.f. July 1984 vide OM No. DPAR 10 SLC 83 dated 3rd July, 1984 which was once again reiterated in G.O. NO.DPAR 2 SLC 90 dated 6th August 1990. Then he stated that Respondents(workmen) were appointed as casual mazdoors by the mine manager during the year 1989 and these appointments being against the ban order were illegal. Therefore, the statements of MW1 & MW2 with regard to the very date of appointment of the first party workmen with reference to the above said ban orders is self conflicting. MW1 wants to say that the appointments of the first party workmen were in contravention of the aforesaid Government order of the year 1990 and whereas, as per MW2 appointments of the first party made in the year 1989 were in violation of the aforesaid OM dated 1st July, 1984. Very strangely MW2 uttered no single word with regard to the appointment of the first party in the year 1990 much less to say that it was against the aforesaid Government Order. Now coming to the statement of MW1 that appointment of the first party workmen was against August 1990 Government Order, as argued for the first party workmen, appears to be an after thought. The management in their counter statement in no uncertain terms have taken a contention that after the services of the first party workmen were discontinued w.e.f. 30-07-1989, they somehow managed in seeking employment at Asuli mines w.e.f. 09-02-1990 and that was done by the Manager not having any authority when there was total ban on making any sort of recruitment. If we go by the aforesaid contention of the management in their counter statement, then we must discard the statement of MW1 to say that first party workmen were appointed by the Manager of Asuli mines on 03-12-1990. If we proceed on the assumption that they were appointed w.e.f. 09-02-1990 as contended in the counter statement then their appointment cannot be held to be against the ban order as the circular issued banning the employment in the mines was dated 06-08-1990 as stated by MW2 in his affidavit referred to supra. It is in the face of this contention of the management, the documents produced by it at Ex. M1 & M2 showing the date of appointment of the first party workmen as 03-12-1990 cannot be relied and acted upon particularly, in the light of the contention taken by the first party workmen that these are the documents concocted by the management subsequently as an after thought. Now, assuming for a moment that the appointments of the first party workmen made either in the year 1988-89 or in the year 1990 were not legal and they being done against the ban orders and by the mines concerned manager not having authority, the

question now to be considered would be whether the services of the first party workmen could have been terminated by way of retrenchment on the ground that they were not appointed through legal process by competent authority. The proposition of law on this aspect of the case has been well settled to the effect that Section 2(00) of the I.D. Act does not make any difference between the regular and temporary appointment or appointment on daily wage basis or appointment of a person not possessing requisite qualification. Their Lordship of Madras High Court in a decision reported in 1996 II LLJ page 217 the President, Srirangam Co-operative Urban Bank Ltd. Vs. the Presiding Officer, Labour Court, Madurai and K. Nagarajan have laid down the principle on this point of law in very clear words at paras 4 & 5 of the said decisions. In very clear words they have ruled that when any employee either permanent or temporary so to say casual worker establishes the fact that he is in continuous service of 240 days and more, he will be entitled to the benefit of Section 25 F of the ID Act. Their Lordship held that Section 25 F does not make any difference whether the appointment has been made in accordance with law or not. In the aforesaid decision the workman was appointed as a temporary Clerk by the said bank in defiance of rules and regulations and therefore, the management contended that provisions of Section 25 F of the I.D. Act are not applicable. The labour court passed award against the management and when the matter was taken up before the Hon'ble High Court, award was affirmed holding that provisions of Section 25F do apply even to the cases where appointment is not made in accordance with law. Their Lordship held that the factum of employment is relevant and not the legality or otherwise of it. In a case reported in 2001 III LLJ(Supp)417 Hawa Singh Vs. Administrator/Krishi Upaj Mandi Samiti Sadalpur. His Lordship of Rajasthan High Court has held that the Petitioner (workman) could not claim regularization as he was not a candidate regularly selected though his termination was bad in law not being in accordance with the provisions of Section 25F of the I.D. Act. Therefore, keeping in view the prinlciple laid down in the aforesaid decisions, it becomes crystal clear that legality or otherwise of any appointment is nothing to do with the provisions of 25F of the I.D. Act. It is made clear that as far as the aforesaid provision is concerned the factum of employment is relevant and not the legality or otherwise of it. Therefore, in the instant case first of all we have no convincing legal evidence so as to record a finding that the appointment of the first party workmen were not in accordance with law or by the competent authority. Secondly, keeping in view the schedule reference points, it was not at all necessary for this tribunal to go into the merits of the said question and to record, such a findings as the controversy between the parties is not with regard to the regularisation of the services of the first party workmen or to absorb their services as permanent workmen. The simple question of fact and law to be determined by this tribunal under the aforesaid schedule was about the alleged termination of the services of the first party workmen and therefore, having regard to the aforesaid preposition of law, it has to be held that the case on hand attracts the provisions of Section 25F of the I.D. Act as undisputedly the first party workmen have rendered continuous service of 240 days and more in each of the calendar year during the period mentioned above.

13. Point No. 3 :

Now, comes to the question as to whether there was a compliance of Section 25F of the I.D. Act so as to say that the termination of the Services of the first party was a legal retrenchment. It is the case of the management that after haring terminated the services of the first party workmen w.e.f. 10-05-1993 the management was given to understand that its act will amount to retrenchment and therefore, to cure the defect, the management on 09-11-1993 paid full wages for the period in between 10-05-1993 to 09-11-1993 treating the workmen as on duty in addition to the retrenchment compensation as per the Act along with one month's wages in lieu of the notice. The fact that the management sent this amount to the first party workmen by way of cheque in the month of November 1993 and the workmen returned back the said cheque keeping it them for about a period of 20 days or more is not disputed in this case. Now, the only question to be considered would be whether the management could have cured the defect of not fulfilling the three conditions of retrenchment laid down under Section 25F of the I.D. Act after the gap of about six months from the actual date of termination of the services of the first party workmen. The plain answer to the said question would be in the negative. Their Lordship of Supreme Court in a decision reported in 1967 (II)LLJ page 23 National Iron and Steel Company Ltd and Others Vs. State of West Bengal on page 29, of the said decision have made the position of law on the point very clear. They have laid down the principle that compliance of Section 25F of the ID Act with regard to the payment of retrenchment compensation and the other amount cannot be done subsequent to the date of termination. In the aforesaid case by notice dated 15th November, 1958 the services of the concerned workmen were retrenched w.e.f. 17th November, 1958 and he was asked to collect the dues and one month's wages in lieu of notice on or after 20th November, 1958. The tribunal held that retrenchment was illegal in violation of Section 25F of the I.D. Act. Their Lordship affirmed the view taken by the tribunal holding that Section 25F has not been complied with, under which it was incumbent on the employer to pay the workman the wages for the period in lieu of the notice as soon as he was asked to go and could not be asked to collect the dues afterwards (1964-1 LLJ 351). His Lordship of Hon'ble Andhra Pradesh High Court in a case reported in 1992 I LLJ page 211 Management of Oasis School Vs. Labour Court & V. Mukundan is very emphatic and assertive on the aforesaid preposition of law. In this case

as could appear from the facts, the workman was paid retrenchment compensation during the course of conciliation proceedings and his Lordship held that retrenchment is invalid and invalidity cannot be cured by subsequent payment of retrenchment compensation. Their Lordship further held that in such a case workman is entitled to claim the reinstatement which is to be granted in the case retrenchment is held to be illegal. In the instant case the defect is more serious. The management takes about six months inorder to cure the invalidity caused in not fulfilling the pre-conditions of Section 25 F of the I.D. Act while terminating the services of the first party workmen. Therefore, there cannot be any hesitation in the mind of this tribunal in coming to the conclusion that the case on hand was a case of retrenchment amounting to illegal termination hit by the provision of Section 25F of the ID Act. In the result, it is to be further held that the action of the management in terminating the services of the management was illegal and void abinitio.

14. Keeping in view the aforesaid finding, it goes without saying that the first party workmen who just worked as a casual workers drawing a meager amount of wages are entitled not only to the relief of reinstatement but also to the relief of full back wages from the date of termination till the date of their reinstatement. Hence the following award :

AWARD

The management is directed to reinstate the first party workmen into its service with full back wages minus any wages paid to them during the pendency of the proceedings from the date of termination till the date of reinstatement with all other consequential benefits including the continuity of service. The Management is at liberty to take suitable action against the first party workmen in accordance with Section 25F of the I.D. Act. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 20th July, 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, केरल मिनरल एवं मेटल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, इर्नाकुलम के पंचाट (संदर्भ संख्या आई.डी. सं. 163/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2007 को प्राप्त हुआ था ।

[सं. एल-29011/7/2003-आईआर(एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 6th August, 2007

S.O. 2416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award I.D. Ref. No. 163/2006) of the Central Government, Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kerala Minerals & Metals Ltd. and their workmen, which was received by the Central Government on 6-8-2007.

[No. L-29011/7/2003-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P.L. Norbert, B.A., L.L.B., Presiding Offier

(Wednesday the 18th day of July, 2007/27th Ashada, 1929)

I.D. 163/2006

(I.D. 42/2003 of Labour Court, Ernakulam)

Union	The General Secretary K.M.M. Titanium Employees Union (CITU) Chavara Kollam
	Adv. Shri Gopalakrishna Pillai
Management	The Managing Director Kerala Minerals & Metals Ltd. Chavara, P.O. Kollam.
	Adv. Shri P. V. Lohithakshan.

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

> "Whether the action of the management of M/s. Kerala Minerals and Metals Ltd., Chavara P.O. Distt. Quilon, Kerala in discontinuing the leave surrender facility to its workers w.e.f. 9-1-2002 is proper, justified and in order ? If not, to what releif the workmen concerned are entitled ?"

2. The facts of the case in a nutshell are as follows :—

The union of the of Kerala Minerals and Metals Ltd., Chavara, Kollam District has raised a dispute that the action of the management company in discontinuing leave surrender facility with effect from 9-1-2002 is improper and unjustified. The union contends that the decision was

taken by management unilaterally without consultation with recognized trade unions. The leave surrender facility was being enjoyed by the employees since a very long time. Without consulting the unions or issuing a notice u/s-9A of Industrial Disputes Act the decision has been taken by management. This decision is based on a Government Order dated 3-6-2002. But the said order is not applicable to the management company as it is not a company which is getting financial assistance from Government. On the other hand, it is company running profitably and also a financer to sick companies. The leave surrender facility was finalized through various long-term settlements between management and unions. It is also provided in the Certified Standing Orders. Therefore the action of the management cannot be justified. The workers are entitled to get the facility restored with effect from 9-1-2002.

3. The management in their written statement contends that the management company is a Government Undertaking. It is owned and controlled by Government. The Company by itself cannot take any decision without consultation with the Government. The orders and directions of the Government of Kerala are to be complied with by the Company. As an economy measure the Government by order dated 16-1-2002 curtailed the leave surrender facility w.e.f. 9-1-2002. That order is applicable to all Public Sector Undertakings, Government-owned Companies, Cooperatives, Corporations, Boards etc. The Company had written to the Government seeking exemption from the order. But the Government directed the Company to obey the Government order. No notice u/s-9A of I.D. Act is required as the Company has implemented only the Government order and not its own decision. All Bilateral settlement between management and unions are subject to the permission of the Government. The dispute raised will not survive as it is regarding legality of the Government order and the unrecongnized unions in the Company representing some of the employees are not parties to the dispute. The claim of the union is unsustainable.

4. In the light of the above contentions the following points arise for consideration :

(1) Whether the Government order dated 16-1-2002 is applicable to management company ?

(2) Are the employees of the Company entitled for restoration of leave surrender facility w.e.f. 9-1-2002 ?

The evidence consist of documents Ext. W1 to W6 on the side of union and Exts. M1 to M5 on the side of management.

5. **Points No. (1) & (2) :**

It is not disputed that leave surrender facility was being enjoyed by the employees of Kerala Minerals & Metals Limited for a very long time. It is an unrestricted and unlimited facility so far as the Company is concerned. Leave surrender facility is stipulated in the Memorandum of Settlement, Ext. W5, Clause 16. The Certified Standing Orders, Ext. W6 also contains a clause regarding Leave Surrender (Clause 13). In 2002 when the Government of Kerala felt financial crunch they decided to take economy measures. As a part of it Ext. M1 order dated 16-1-2002 was issued. Para 6 of the order is as follows :—

> "Surrender Leave Salary will be discontinued with effect from 9-1-2002. However cases of Surrender Leave sanctioned before 9-1-2002 will not be covered. Terminal Surrender at the time of retirement shall continue".

Thereafter on 3-6-2002 a clarificatory Government order was issued which is Ext. M2. The relevant portion reads :—

> "Various economy measures issued by Government from time to time are applicable to Public Sector Undertakings, Government owned Companies, Cooperatives, Corporations, Boards, Universities, Autonomous Bodies etc. receiving financial assistance from Government."

6. In the light of the above order, Ext. M2, it is argued by the learned counsel for the union that the restriction regarding leave surrender is not applicable to the management Company as it is not receiving financial assistance from Government. However the learned counsel for the management, relying on the next paragraph of Ext. M2 order, submits that the order is applicable to all Public Sector Undertakings including Statutory Undertakings, Welfare Boards, Cooperatives, Universities etc. Moreover, the management had written to the Government seeking exemption from the order so far as the Company is concerned. The reasons were also stated. However the Government has not given a favourable reply. Hence the Company is unable to deviate from Ext. M1 order. It is also submitted that the management Company being a Government-owned Company there is no question of getting financial assistance from the Government. It is owned and controlled by Government itself.

7. It is not disputed that Kerala Minerals and Metals Ltd. is a Govenment Undertaking. A Government Undertaking is defined in 'Concise Law Dictionary' of P. Ramanantha Aiyar, 3rd Edition (2006), Pg. 503 as follows :—

" 'Government Undertaking' means any Industrial undertaking carried on—

(i) by a department of the Government, or

(ii) by a corporation established by a Central, Provincial or State Act which is owned or controlled by the Government, or

(iii) by a Government company as defined in Section 617 of the Companies Act, 1956..."

Section 617 of the Companies Act defines Government Company as follows :—

> "Government Company—means any company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined."

Going by Ext. M2 order, the various economy measures issued by Government from time to time are applicable to Public Sector Undertakings, Government-owned Companies, Cooperatives, Corporations, Boards, Universities etc. which receive financial assistance from Government. As per the last portion of the order, the words 'financial assistance from government' is applicable to all Bodies like Public Sector Undertakings, Government-owned Companies etc. The argument of the learned counsel for the management, that the words 'financial assistance from Government' goes with Autonomous Bodies only, is not sound. The said clause is applicable to all the Bodies aforementioned and not to one alone. Therefore in spite of the fact that management is a Government-owned Company which is a Public Sector Undertaking of the Government of Kerala, it falls within the clause in Ext. M2 order extracted earlier and hence unless the management Company receives financial assistance from Government the order in Ext. M2 will not be applicable to the management Company.

8. In the last Para of Ext. M2 order, relied on by the learned counsel for the management, it is stated that the restriction regarding leave surrender is applicable to all Public Sector Undertakings including Statutory Undertakings, Welfare Boards, Cooperatives etc. The said clause, it is argued, is without qualification or condition as to financial assistance from Government. It is to be noted that it is by way of clarification that the 3rd para was added in Ext. M2, but does not annual Para 2 of the order. It is pointed out by the learned counsel for the union that the management Company is a profit making concern and instead of getting financial assistance from Government the Company is financing so many other Government Companies in Kerala as per the request of the Government. Exts. W3&4 support this contention. Ext. W3 is an order of the Government requesting the Company to release Rupees Two crores five lakhs to 18 Companies mentioned in the letter as temporary loans. This direction was issued on 17-8-2002. Ext. W4 is another request from Government to release an amount of Rupees One crore as a temporary loan to Kerala State Bamboo Corporation Ltd., Angamaly. Therefore it is contended that the management Company is rather a financer to sick companies than a beneficiary of any financial assistance from Government. The contention is not without force. As per Ext. M2 order the economy measures of taking away leave surrender facility is not applicable to the management company though it is a Public Sector Undertaking. The facility was taken away w.e.f. 9-1-2002. But thereafter as per Ext. M4 order the facility of surrender of earned leave for 10 days was restored in 2003. Again by Ext. M5 order of the Government earned leave surrender facility for 20 days was restored in 2004. However the employees of the management company were enjoying unlimited leave surrender facility and they insist for restoration of the same. They are entitled for restoration of the entire leave surrender facility as they were enjoying prior to 9-1-2002. Hence their claim is only to be allowed.

9. In the result, an award is passed finding that the action of the management of M/s Kerala Minerals and Metals Ltd., Chavara P.O. Distt. Quilon, Kerala in discontinuing the leave surrender facility to its workers w.e.f. 9-1-2002 is not proper and justifiable. The workmen are entitled for restoration of leave surrender facility w.e.f. 9-1-2002. No cost. The award will take effect one month after its publication in the offical Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 18th day of July, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Union:

Nil.

Witness for the Management:

Nil.

Exhibits for the Union:

W1. Photostat copy of Govt. of Kerala order No. GO(P)56/02/Fin. dated 16-1-2002.

W2. Photostat copy of Government of Kerala order No. GO(P) 149/02/Fin. dated 3-6-2002.

W3. Letter No. 25572/113/02/ID dated 17-8-2002 issued by the Principal Secretary to Government of Kerala to the management.

W4. Copy of letter No. 25572/113/02/ID dated 19-8-2002 issued by the Principal Secretary to Govt. of Kerala to the management.

W5. Photostat copy of extract of Annex. VII of various Memorandum of Settlements on Leave Rules of the Company, dated 12-8-2007.

W6. Photostat copy of extract of sub-clause 13, of Clause 4 of Standing Order No. 21 of the Certified Standing Order of the Company.

Exhibits for the Management :

M1. Copy of Government of Kerala order No. GO (P) 56/02/Fin. dated 16-1-2002.

M2. Copy of Government of Kerala Order No. GO (P) 149/02/Fin. dated 3-6-2002.

M3. Copy of letter dated 14-1-2003 addressed to Personal Secretary, Industrial Deptt., Government of Kerala by Managing Director, K.M.M.L.

M4. Copy of Government of Kerala order No. GO (P) 332/04/Fin. dated 23-7-2004

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरपोर्ट ऑथोरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, नई दिल्ली के पंचाट (संदर्भ संख्या आई.डी. सं.- 137/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2007 को प्राप्त हुआ था ।

[सं. एल-11011/51/2004-आई आर (एम.)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 6th August, 2007

S.O. 2417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. ID. No. 137/2004) of the Central Government Industrial Tribunal/ Lobour Court II, New Delhi now as shown in the Annexure in the Industrial Dispute between the Employers in relation to the management of Airport Authority of India and their workmen, which was received by the Central Government on 6-8-2007.

[No. L-11011/51/2004-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT-II, NEW DELHI

Presiding Officer: R.N. Rai. I.D. No. 137/2004

PRESENT

Sh. V. K. Sharma —1st Party
Sh. A.P. Vinod —2nd Party

In the matter of :—

Shri Ashwani Kumar,
Through APS & SSW Employees Union (Regd.),
5/24, Nehru Ekta Colony, Section—VII,
R. K. Puram,
New Delhi—110 022.

Versus

The Dy. General Manager,
Airport Authority of India,
International Airport Division, Delhi Project,
IGI Airport,
New Delhi.

AWARD

The Ministry of Labour by its letter [No. L-11011/51/ 2004 IR(M)] Central Government Dtd. 12-08-2004 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the demand of the APS and Indian Airports Kamgar Union (Regd.) in regard to the reinstatement and regularization of services of Shri Ashwani Kumar, Ex. Beldar employed through contractor in the establishment of AAI, New Delhi w.e.f. September, 2003 is just and fair and legal ? If yes, to what relief the workman is entitled and from which date.?"

The workman applicant has filed claim statement in the claim statement it has been stated that the workman above named has been working with the above noted management as Beldar since 20-02-2001 most sincerely and diligently and his last drawn salary is Rs. 2300 per month.

That the work performed by the workman was of perennial nature and the management had already kept employee of the likewise categories on regular basis and those employees are getting higher wages and benefits amounting to Rs. 13000 approximately and the management was paying the workman much below the rate of Minimum wages prescribed by the Government as the rate of Minimum wages for the category that of the workmen is Rs. 2783 per month.

That the workman had been demanding regularization of his service of the management and was also demanding wages and benefits at par with other likewise workmen who are shown on regular basis by the management along with the payment of difference of wages less paid in the past, payment of over time wage for the work the management is taking extra work done after duty hours, on leave day and on holidays with arrears but the management had not given any attention to the lawful demand of the workman. The management had also made deductions from the wages of the workman towards EPF and ESCI Contributions but no accounts/acknowledgement receipt for the same has been given to the workman.

That on the request of the workman Ashwani Kumar and other workers the union had made complaint/demand to the management vide letter dated 4-9-2003 requesting the management to regularize the services of the workman to pay him wages and benefits at par with other like wise employees of the management with arrears of wages and allowance less paid in the past etc. but the management instead of considering the demand of the workman had started harassing the workman on one way or the other and had threatened him of terminating from services and of implicating into some false criminal case with the help of local police and the workman had also made complaint regarding the same through his Union to the S.H.O., P.S.I.G.I. Airport, New Delhi and also lodged protest against the illegal action of the management vide complaint dated 10-9-2003 but the management had continued harassing the workman and had not considered the demand of the workman and then it had terminated the services of the workman w.e.f. 16-09-2003 by way of not allowing him to

resume duty on 16-09-2003 onwards despite his reporting for duty and thus the workman having served a demand notice dated 18-9-2003 upon the management through his union had taken up his case before the labour Authorities of the Government and when no settlement could be arrived at before the labour Authorities the matter has been referred by the appropriate Government for adjudication to the Hon'ble Court.

That the workman is legally entitled for reinstatement in service with continuity of services and full back wages with all other legal dues and incidental benefits and the workman is also entitled to be treated as a regular employee of the management from the day he had been working with the management against a regular vacancy and for the payment of wages and benefits at par with other like wise regular category of workman of the management with payment of arrears of wages and allowance less paid to him than that of the wages and allowances of the regular employee in the past.

The Management has filed written statement in the written statement it has been stated that the claim is liable to be dismissed for non-joinder of necessary parties. It is submitted that the workman was admittedly working on contract basis under various contractors and therefore, ought to have made them necessary parties in the present case.

That the contents of para 3 of the claim except matters of record are wrong and denied. It is wrong and denied that the management had made deduction from the wages of the workman towards EPF and ESCI contributions as alleged or otherwise. It is submitted that the management does not have any employer-employees relation with the workman. And as such they are not responsible for his appointment/termination of service/regularization of service and payment of salary and other alleged benefits.

That the contents of para 4 of the claim except matters of record are wrong and are denied and needs no comments. However, it is denied that the Respondent Management has harassed the workman on one way or the other and had threatened him of terminating from service and of implicating him into some false case with the help of local police as alleged or otherwise. It is wrong and denied that the management had continued harassing the workman and had terminated his services w.e.f. 16-09-2003 by way of not allowing him to resume duty on 16-09-2003 onwards despite his reporting for duty as alleged or otherwise.

That the content of para 5 of the claim statement except matters of record are incorrect, wrong, vague and are denied. It is wrong and denied that the workman is legally entitled for reinstatement in service with continuity of services and full back wages with all other legal dues and incidental benefits and the workman is also entitled to.

That the workman has no locus standi to file the present case against the answering respondent and grievance, if any, are to be taken up against his respective contractor under whom he was working.

That the workman has withheld relevant information from this Hon'ble Tribunal. It has not been stated that the allotment of the contract was by due advertisement and tender and that subtle submission that he has been continuously employed is incorrect since the contract has been awarded from time to various qualifiers who tender. It is submitted that there is no privity of contract between the workman and the respondent under the terms of the contract awarded.

That it is well settled law as ruled by the Constitution Bench of the Supreme Court in Steel Authority of India Ltd., vs. National Union Watefront Workers that on abolition or prohibition of contract labour under Sec. 10 of the Contract Labour (R & A) Act, 1970 the workers engaged through the contractor will not automatically become the employees of the principal employer. The detailed reasons afforded by the Hon'ble Court while delivering the said judgment are not repeated here for the sake of brevity and may form part of the present reply and may be allowed to be referred as and when the need arises.

It is wrong and denied that the workman has been working with the Management as Beldar since 20-2-2001 most sincerely and diligently and his last drawn salary is Rs. 2300/- per month as alleged or otherwise. It is submitted that the workman was not engaged by the Management and was an employee of the contractor. It is submitted that the wages were paid to the workman promptly as per minimum wages prescribed by the appropriate Govt.

It is wrong and denied that the work performed by the workman was of perennial nature and the management had already kept employee of the likewise categories on regular basis and those employees are getting higher wages and benefits amounting to Rs. 13,000/- approximately and the management was paying the workman much below rates of Minimum wages for the category as alleged or otherwise be treated as a regular employee of the management against a regular vacancy and for the payment of wages and benefits at par with other regular category of workman of the management with payment of arrears of wages and allowances less paid to him than that of the wages and allowances of the regular employees in the past as alleged or otherwise.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that he worked as Beldar with the management w.e.f. 20-02-2001 to 16-09-2003 at the salary of Rs. 2300 per month. The work performed by the workman was of perennial nature and the management has already kept employee of the likewise categories on the regular basis. The management has not paid him the prescribed minimum wages by the Government @Rs. 2783 per month. When the workman demanded regularisation his services were terminated on 16-09-2003. It was further submitted that the workman deserves reinstatement alongwith full back wages and continuity of service.

It was submitted from the side of the management that there is no employer-employee relationship with the workman. The workman has not been appointed by the management. The workman may have worked as contractor's workman. No wages to the workman has been paid by the management. The duties discharged by the contractors are not perennial in nature.

It was submitted from the side of the workman that in case it is found that the workman is an employee of the contractor, the management cannot engage contractor workers for perennial nature of work. It is prohibited by Contract Labour (Regulation & Abolition) Act, 1970. No contract can be assigned for a work which is perennial in nature or of sufficient duration. The workman worked under the control and supervision of the management and wages were paid to the workman by the management. In the circumstances there is contract of service and not contract for service. The management decided the manner in which the work was to be done.

From perusal of the records it transpires that the workman has not filed any document to show that payment to him was made by the management. The workman has filed Muster Roll of 01-03-2003 to 31-03-2003. This is the only document to establish that the workman has been paid Rs. 2317/- for the month of March, 2003. The workman has not filed any other document regarding his regular employment.

The management has filed contract agreement. From perusal of the agreement it transpires that the management has engaged contractors for display and maintenance of potted plants, cleaning of grass, removal of rubbish, supply and stacking cow dung manure for its nursery. The contract agreement also indicates that the number of potted plants in the nursery in terminal and number of dates in nursery, the area of cleaning of grass and removal of rubbish etc. has also been mentioned in the contract. The contract agreement discloses that the contractor has undertaken to supply potted plants etc. to the nursery. Such work cannot be said to be a work of regular nature. The employment of day to day mallies is not required in such circumstances.

There is no merit in the contention of the workman that he worked under the control and supervision of the management. No documentary proof has been filed regarding control and supervision. There is no documentary proof that the workman worked in the premises of the management and his services were integrated with the management. The workman has filed no document to show that payment to him was made by the management. There is absolutely no document regarding payment of wages.

The contractor's workman can become an employee of the Principal Employer in case control and supervision are exercised by the management and the services of the workmen are integrated with the management.

From the above discussions it is obvious that for a relation of employer-employee there must be contract of service. The contractor workers will become the employee of the Principal Employer in case the services of the workmen is controlled and supervised by the management. The workman discharged duties accordjng to the directions of the contractor and payment to him was made by the contractor. The contract cannot be said to be sham and camouflage. The workman is not entitled to get any relief as prayed for.

The reference is replied thus :—

The demand of the APS and Indian Airports Kamgar Union (Regd.) in regard to the reinstatement and regularisation of services of Shri Ashwani Kumar, Ex. Beldar employed through contractor in the establishment of AAI, New Delhi w.e.f. September, 2003 is neither just nor fair nor legal. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Date: 24-07-2007

R. N. RAI, Presiding Officer

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाईम स्टोन माईन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ आई.डी. सं.- 22/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-8-2007 को प्राप्त हुआ था ।

[सं. एल-29012/40/2001-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 6th August, 2007

S.O. 2418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. ID No. 22/01) of the Central Governement Industrial Tribunal, Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of Lime Stone Mines and their workman, which was by the Central Government on 6-8-2007.

[No. L-29012/40/2001-IR (M)]

N. S. BORA, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा/राज.

पीठासीन अधिकारी-श्री गोवर्धन बाढ़दार, आर. एच. जे. एस.

निर्देश प्रकरण क्रमांक : ओ. न्या.-22/01
दिनांक स्थापित : 18-8-01

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल-29012/40/2001 (आई आर एम) दिनांक 3-8-01

निर्देश अन्तर्गत धारा 10(1)(घ)
औद्योगिक विवाद अधिनियम, 1947

मध्य

बालचन्द, माईन्स फोरमैन, पी. ओ. साथलखेड़ी तह. रामजंगमण्डी, कोटा

प्रार्थी श्रमिक

एवं

मसूद अहमद पुत्र श्री हाजी सुल्तान अख्तर भाई,
लाईम स्टोन माईन्स ऑनर, बाजार नं. 4 पी. ओ.
रामगंजगमण्डी जिला कोटा

अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री सतीश पचौरी
अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री आर. एस. शर्मा
अधिनिर्णय दिनांक : 15-6-07

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या दिनांक 3-8-01 के जरिये निम्न निर्देश, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

"क्या श्री मकसूद अहमद पुत्र श्री सुल्तान अख्तर, लाईम स्टोन, खदान मालिक, रामगंजमण्डी द्वारा कर्मकार श्री बालचन्द की सेवायें दि. 18-11-2000 से समाप्त करने की कार्यवाही वैध एवं उचित है ? यदि नहीं तो संबंधित कर्मकार किस अनुतोष का अधिकारी है ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना विधिवत रूप में जारी की गयी ।

3. प्रार्थी श्रमिक बालचन्द की ओर से क्लेम स्टेटमैन्ट प्रस्तुत कर संक्षेप में यह अभिकथित किया गया है कि वह अप्रार्थी नियोजक के यहां पत्थर खान में मजदूरी पर कार्य करता था जिसे लगभग 3000/ रु. प्र. माह मजदूरी मिलती थी, किन्तु उसे अचानक 18-11-2000 से कार्य पर नहीं आने दिया तथा हटाने से पूर्व कोई नोटिस अथवा नोटिस वेतन का भुगतान नहीं किया गया । जिस दिन प्रार्थी को हटाया गया, उस दिन तक वर्ष 97 से एलटीसी, मेडिकल, पी.एल. व अन्य देय भुगतान आदि 50,000/ रु. व दो-तीन वर्ष का 20% बोनस अप्रार्थी से लेना था जो मांगने पर भी भुगतान नहीं किया गया । प्रार्थी ने सेवा पृथक दिनांक से वर्ष 90 तक के प्रत्येक कलेण्डर वर्ष में 240 दिन से अधिक का समय पूर्ण कर लिया था, किन्तु उसे यह भुगतान भी नहीं किया गया है । प्रार्थना की गयी है कि उसे उक्त प्रकार से हटाया जाना अनुचित एवं अवैध घोषित करते हुए पिछले सम्पूर्ण वेतन व समस्त लाभों सहित सेवा में पुर्नस्थापित का अनुतोष प्रदान किया जावे ।

4. अप्रार्थी नियोजक की ओर से जवाब प्रस्तुत करते हुए प्रतिवाद स्वरूप यह अभिकथित किया गया है कि प्रार्थी द्वारा वर्णित तथ्य क्लेम के गलत हैं वह अपनी मर्जी से अनुपस्थित हो जाता था और कार्य से अव्यवस्थित हो जाता था, सेवा पृथक तिथि 28-11-02 गलत अंकित की गयी है, जबकि प्रार्थी द्वारा स्वयं के हस्ताक्षर कर दि. 20-11-2000 से त्याग-पत्र दिया गया है जिसे नियोजक द्वारा स्वीकार किया जाकर प्रार्थी को सूचना दी गयी है जिसे प्रार्थी द्वारा प्राप्त भी की गयी है । प्रार्थी द्वारा कर्मचारी पेंशन योजना प्राप्त करने हेतु फार्म सं. 10-ग भरकर भी नियोजक को सत्यापन हेतु दिया गया है जिसे 5-7-2001 को प्रमाणित किया गया है जिसमें भी प्रार्थी द्वारा कॉलम सं. 5 में सेवा छोड़ने का कारण स्वेच्छा से कार्य आने का तथ्य अंकित किया गया है । त्याग-पत्र उपरान्त समस्त राशि प्रार्थी ने प्राप्त कर ली है । दि. 9-11-01 को एक राजीनामा लिखकर नोटेरी से तस्दीक करवाकर कोई शेष लेना-देना नहीं बतलाया गया है । क्लेम गलत तथ्यों पर आधारित होने से सव्यय निरस्त किये जाने की प्रार्थना की गयी है ।

5. प्रार्थी-श्रमिक की ओर से प्रस्तुत प्रकरण में किसी प्रकार की कोई साक्ष्य प्रस्तुत नहीं की गयी । दि. 29-5-07 को प्रार्थी की साक्ष्य बन्द की गयी । अप्रार्थी नियोजक की ओर से भी कोई मौखिक साक्ष्य तो प्रस्तुत नहीं की गयी, किन्तु क्लेम स्टेटमेन्ट के जवाब समर्थन में दस्तावेज प्रस्तुत किये गये हैं जो अभिलेख पर लिये गये ।

6. बहस पक्षकारों की सुनी गयी, पत्रावली का ध्यानपूर्वक अवलोकन किया गया ।

7. इस न्यायाधिकरण के समक्ष यह विचारणीय बिन्दु उत्पन्न होता है कि क्या प्रार्थी मसूद अहमद की सेवायें दि. 18-11-2000 से समाप्त करने की कार्यवाही वैध एवं उचित है ? यदि नहीं तो वह किस प्रकार के अनुतोष का अधिकारी है ?

8. अप्रार्थी-नियोजक की ओर से जवाब के विशेष कथन में यह अभिकथित किया गया है कि प्रार्थी ने स्वेच्छा से त्याग-पत्र देकर सेवायें समाप्त की हैं जिसे नियोजक द्वारा मंजूर कर प्रार्थी को सूचित किया गया है । प्रार्थी द्वारा अपना समस्त हिसाब-किताब कर बकाया राशि प्राप्त कर ली गयी है, इसके अलावा कर्मचारी पेंशन योजना

स्कीम के तहत लाभ प्राप्त करने के श्रमिक द्वारा नियोजक से फार्म भी प्रमाणित करवाया गया है कि जिसे स्वेच्छा से घरेलू कार्य आने के कारण सेवा त्याग का कथन अंकित किया गया है । तदुपरान्त भी दि. 9-11-2001 की नोटेरी के यहां दो गवाहों के सामने राजीनामा पेश कर कोई कार्यवाही नहीं किये जाने का कथन दिया गया है, तदुपरान्त गलत तथ्यों के आधार पर अपना विवाद यहां पेश किया गया है जो खारिज होने योग्य है ।

9. अप्रार्थी नियोजक की ओर से प्रस्तुत दस्तावेज राजीनामा दिनांकित 9-11-01 हस्तगत निर्देश से सम्बधित है जिसमें प्रार्थी श्रमिक ने यह स्वीकार किया है कि वह अपनी सेवानिवृति 18-11-2000 से वैध मानता है तथा वह 18-11-2000 के उपरान्त किसी भी वेतन लाभ को प्राप्त नहीं करेगा एवं भविष्य में अपने सेवा में पुनर्स्थापित के अधिकार को त्यागता है । अप्रार्थी नियोजक ने प्रार्थी को वेतन फुल एण्ड फाईनल सेटिलमेन्ट के अन्तर्गत कुल 10,550 रु. की राशि अदा कर दी है । राजीनामा नोटेरी पब्लिक द्वारा तस्दीक किया गया है । अभिलेख पर दि. 20-11-2000 से प्रार्थी बालचन्द द्वारा प्रस्तुत त्याग-पत्र स्वीकार किये जाने के आदेश की प्रति भी प्रस्तुत की गयी है । प्रार्थी बालचन्द द्वारा कर्मचारी पेंशन योजनान्तर्गत प्रत्याहरण लाभ के दावे के लिए प्रस्तुत फार्म सं. 10-ग की प्रति भी प्रस्तुत की गयी जिसमें सेवा छोड़ने का कारण निजी बताया गया है । प्रार्थी श्रमिक स्वयं अपने द्वारा निष्पादित राजीनामें व प्रस्तुत त्यागपत्र के आधार पर विधिवत है । प्रार्थी के प्रकरण में प्रार्थी स्वयं द्वारा त्यागपत्र दिये जाने के कारण अप्रार्थी नियोजक द्वारा की गयी सेवा समाप्ति की कार्यवाही वैध है । अत: प्रार्थी श्रमिक, अप्रार्थी नियोजक से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है तथा सम्प्रेषित निर्देश/विवाद को इसी प्रकार अधिनिर्णित कर उत्तरित दिया जाता है ।

गोवर्धन बाढ़दार, न्यायाधीश

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भिलाई स्टील प्लान्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दुर्ग के पंचाट (संदर्भ संख्या 26/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2007 को प्राप्त हुआ था ।

[सं. एल-26012/3/2006-आई आर (एम.)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 6th August, 2007

S.O. 2419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/06) of the Central Government Industrial Tribunal/Labour Court, Durg now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant and their workman, which was received by the Central Government on 6-8-2007.

[No. L-26012/3/2006-IR (M)]

N. S. BORA, Desk Officer

अनुबन्ध

न्यायालय—न्यायाधीश, अंतर्गत—आई. डी. एक्ट. श्रम न्यायालय, दुर्ग (छ. ग.)

प्रकरण क्रमांक 26/2006/आई. डी. एक्ट/रेफ्रेन्स.

1. मन्नाराम पिता-श्री टीलूराम,
उदयपारा, दल्लीराजहारा, जि. दुर्ग - प्रथम पक्षकार

विरुद्ध

1. दी मैनेजिंग डायरेक्टर, भिलाई स्टील
प्लांट, भिलाई, जि.-दुर्ग (छ. ग.) -अनावेदक/द्वितीय पक्षकार

"समझौता के आधार पर अधिनिर्णय दिनांक-23-7-07"

1. प्रथम पक्ष मन्नाराम पिता-टीलूराम और द्वितीय पक्ष भिलाई-स्टील प्लांट, भिलाई मैनेजमेंट के बीच औद्योगिक विवाद उत्पन्न होने के कारण उपयुक्त शासन, "केन्द्रीय भारत शासन" की ओर से अण्डर सेक्रेटरी, मिनिस्ट्री आफ लेबर, गर्वनमेंट आफ इंडिया, न्यू दिल्ली की ओर से अनुसूची के अनुसार प्रकरण औद्योगिक विवाद अधिनियम, 1947 की धारा-10 के अंतर्गत "श्रम न्यायालय, दुर्ग" को अधिनिर्णयार्थ सौंपा गया है ।

2. केन्द्रीय शासन की ओर से प्रस्तुत संदर्भित प्रकरण श्रम न्यायालय, दुर्ग की दायरा पंजी में क्रमांक -26 आई. डी. एक्ट/रेफ्रेन्स/2006 में पंजीबद्ध किया गया । दोनों पक्ष न्यायालय में उपस्थित हुये। स्टेटमेंट ऑफ क्लेम एवं स्टेटमेंट आफ क्लेम का उत्तर दोनों पेश हुआ । प्रकरण के श्रम न्यायालय, दुर्ग में लंबित रहने के दौरान 20-6-2006 को दोनों पक्षों के बीच क्षेत्रीय श्रमायुक्त-केन्द्रीय की उपस्थिति में लिखित समझौता हो गया है जो श्रम न्यायालय को प्रेषित किया गया है ।

3. अत: दोनों पक्षों के बीच क्षेत्रीय श्रमायुक्त (केन्द्रीय) अन्य दो गवाहों की उपस्थिति में किये गये सेटलमेंट के आधार पर प्रकरण में निम्नानुसार अधिनिर्णय पारित किया जाता है :-

अधिनिर्णय

1. उभयपक्ष दिनांक 20-6-2006 के लिखित समझौते की शर्त क्रमांक-1, 2, 3, 4 एवं 5 का शब्दश: पालन करने के लिये समझौते के अनुसार बाध्य हैं ।

2. उभयपक्ष के बीच किये गये समझौता वैध एवं उचित घोषित किया जाता है ।

3. उभयपक्ष प्रकरण का वाद-व्यय अपना-अपना स्वयं वहन करेंगे ।

अरुण कुमार चौकसे, न्यायाधीश

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